

I have been a part of the military all my adult life. The jurors take their responsibilities extremely seriously. They hold the Government to their burden of proof. And the judges and the lawyers are outstanding.

There will be a group of people who will not be subject to war crimes trials because of the nature of the evidence, because of the unique relationship we may have between the evidence and an ally, that we are not going to subject that evidence to a beyond-a-reasonable-doubt standard, but we know with certainty, beyond a preponderance of the evidence, that this person is a member of a terrorist organization and is engaged in dangerous activities and likely to do that in the future.

What I am arguing to the administration, proposing to them, is those people we think are too dangerous to let go, let's create a national security court made up of Federal judges, somebody out of the military, who will look over the military shoulder and see if the evidence warrants an enemy combatant designation. That way, we will have an independent judiciary validating the fact that the person in custody is part of an enemy force, a danger to this country, and then have a periodic review of that person's status so they are not left in legal limbo. They will have a chance every year to make their case anew.

We have to realize that we have released more people from Guantanamo Bay than we have in detention and we have put people in Guantanamo Bay who were there by mistake. That is a fact. We threw the net too large. That happened.

Let me tell you what else has happened. Mr. President, 1 in 10 we let go has gone back to the fight. The No. 2 al-Qaida operative in Somalia was a detainee at Guantanamo Bay. We had a suicide bomber in Iraq blow himself up who was at Guantanamo Bay. We are going to make mistakes, but I want a process to limit those mistakes as much as possible.

I end with this thought. How we do this is important. We can close Guantanamo Bay and repair our image, but we have to have a legal system that has robust due process, that is transparent, that is independent, but recognizes we are at war. And that takes us to the Uyghurs.

There is a group of people in our custody whom we caught in Afghanistan who are part of a separatist movement in China. They are Muslims. They were training in Afghanistan to go back to China to take on the Chinese Government. They have been determined to no longer be enemy combatants in terms of a threat from the al-Qaida perspective, but what to do with the Uyghurs.

One thing I suggest to the President is that you cannot change immigration law. Our laws prevent a known terrorist from being released in our country. These people have engaged in terrorist activities. Their goal was to go back to China, not to come here. But

there are press reports that one of the Uyghurs was allowed to look at TV and saw a woman not properly clothed and destroyed the television. We have to make sure that, one, we follow our own laws, and the fact they were going to go back to China does not mean they are safe to release here because they have been radicalized.

We have to make some hard decisions as a nation. I stand ready with the President and my Democratic colleagues to close Guantanamo Bay, but we do need a plan. We need a legal system of which we can be proud that will protect us.

The final comment is that the idea of releasing more photos showing detainee abuse is not in our national interest. We have men and women serving overseas. It will inflame the populations. It will be used by our enemies. I urge the administration to take that case all the way to the Supreme Court and protect our troops in the field.

I understand the President's dilemma and challenge. Harsh interrogation techniques have hurt this country more than they have helped. We can be a nation that abides by the Geneva Conventions, rule of law—we have been that way for a long time—and still defend ourselves. I agree with the President there. But I do believe we need a detainee policy that understands that the people we are talking about are not run-of-the-mill criminals. They are committed terrorists, and I don't say that lightly. The only way that label should stick under the system I am proposing is if an independent judiciary validates that decision. That is the best we can do.

This decision we are going to make as a nation is important. I tried to speak my mind and be balanced. There is a way for us to work together to get this right. I look forward to working with the administration to make some of the most difficult decisions in American history. I am confident we can do it if we work together.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of S. 896, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 896) to prevent mortgage foreclosures and enhance mortgage credit availability.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Illinois, Mr. DURBIN, is recognized to offer an amendment on which there will be 4 hours of debate equally divided.

AMENDMENT NO. 1014

(Purpose: To prevent mortgage foreclosures and preserve home values)

Mr. DURBIN. Madam President, I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Mr. DODD, Mr. REID, Mr. SCHUMER, Mr. WHITEHOUSE, and Mr. HARKIN, proposes an amendment numbered 1014.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DURBIN. Madam President, America is facing a crisis, and this is what it looks like: Two buildings next to one another, one a well-kept home; next door, a foreclosed property, boarded up, vacant, vandalized. Sadly, this is a crisis which is affecting every community in America. I have seen it in the streets of Chicago. I have seen it in suburban towns. I have seen it in my downstate communities.

Madam President, 8.1 million homes are facing foreclosure in America today. That isn't my estimate, it is the estimate of Moody's. They are supposed to be good predictors of our economy. What does 8.1 million foreclosed homes represent? One out of every six home mortgages in America in foreclosure—one out of every six. It is a reality. It is a reality that affects the five out of six, our homes where we continue to make our mortgage payments and wonder what the problem is. Why is the value of my home going down? I am making the payments. It is going down because, sadly, somewhere on your block is another home in foreclosure, boarded up, an eyesore at best, a haven for criminal activity at worst—a reality that continues to grow.

Two years ago, before we even started in on this crisis as we know it, I proposed a change in the bankruptcy law, a change which I think could have forestalled this crisis we know today. Along the way, there has been resistance to this change. By whom? The banks that brought us this crisis in America have resisted this change to do something about mortgage foreclosure. That is a fact.

Last year, I offered this amendment to change the bankruptcy law, and the banking community said: Totally unnecessary; we don't need this kind of a change. This mortgage foreclosure is not going to be all that bad.

In fact, the estimates were of only 2 million homes in foreclosure last year from our friends in the banking community, the so-called experts. Here we are a year later. The estimate is now up to 8 million homes in foreclosure.

Who are these people facing foreclosure? Were they speculators and investors who were buying up properties and they thought that maybe they would double in value and they could quickly sell them? There may be a handful of those folks out there. By and large, they are families—families who are trying to keep it together,

under a roof, the most important asset they own, their home, trying to make payments when they discovered that the mortgage that was peddled to them by the same banking industry and mortgage banking industry turned out to be a fraud on its face.

We remember the heyday of all this activity. They would tell people: Come on in. Call this 800 number. We can let you finance and refinance. We have a deal for you.

People would show up at these mortgage brokers, and they would say: How much money do you make?

The guy would say: So many thousand dollars.

They would say: Oh, you are perfect. We have just the mortgage that will put you in this home, keep you in this home, or let you borrow money on this home.

The person would say: Do you need some proof? Do you need some documentation?

No, no, no, your word is good enough. No-doc mortgages.

In no time at all, they would be sitting at a closing. I have been to quite a few of them myself as a lawyer and buying a few properties in my own life. They give them a stack of papers—you know what I am talking about, a stack of papers—and they would turn the corners and say: Just keep signing it. Sign it.

What is it?

Oh, government forms, standard boilerplate. I could read it to you, but we want to get out of here in the next half hour. Keep signing, you keep signing.

At the end of the day, they say: In 60 days, first payment. You are going to love this place.

Out the door, and in comes another couple. That is what it was all about.

Then what happened 12 months later, 2 years later? That mystery mortgage kind of exploded in their face. All of a sudden, they were facing terms in that mortgage that were absolutely incomprehensible and unsustainable. They could not make the payments on it. The interest rates were going up too high. They called them subprime mortgages. That was the initial onslaught of this housing crisis in America. But then it grew into a lot of other mortgages too.

I told the story before—and it is worth repeating—of the flight attendant I met on a United flight flying from Washington to Chicago. After she did her chores on the plane and there was a quiet moment, she came and knelt down in the aisle next to me.

Senator, I have a problem. I am a single mom with three kids. I live out in the suburbs. I have worked for this airline for 20 years. I have been a good employee, always show up for work. I take it seriously. I have my little home out there, but I have a problem. My interest rate on my mortgage is too high. I need to take advantage of lower interest rates that are now available. If I can get down to a lower interest rate,

a lower monthly payment, I can keep my home. But if I don't, I am going to lose it. I can't make ends meet. I can't keep it together. What am I supposed to do? They say I am underwater?

Do you know what that means? The value of your home is less than the mortgage principal today. It has happened to a lot of people.

Do you know what I told her: Sadly, I don't have an answer for you. If that bank will not bring you in, sit you down at a desk, and renegotiate the terms of that mortgage, you are about to go through the most painful, torturous path in your life. You are forced into default on your mortgage, you cannot make the payments, you become delinquent, receive the notice of foreclosure, and then it just goes from bad to worse.

Madam President, 8 million American stories, 8 million foreclosures. What we are offering today is the only proposal before the Senate which gives us a chance to do something about this crisis. It is the only thing that can change the dynamic which continues to eat at the heart of our economy which adds foreclosure upon foreclosure and completely paralyzes the housing industry in America. That is at the heart of this recession. That was the canary in the coal mine. That is what triggered where we are today, and it is still there and getting worse.

I sat down 2 years ago with the banking industry and said to them: We have to do something.

I can recall conversations with Henry Paulson from Wall Street, Secretary of the Treasury under President George W. Bush, where I said to Mr. Paulson: I know you wanted to save the banks, but how about saving the homeowners? What are we going to do about the mortgage foreclosure? Well, we will get to that later; or, it is not a problem. He kept putting me off and putting me off. He put me off, but he didn't put off the crisis.

Why is it in this country, in America, that we can find hundreds of billions of taxpayers' dollars from hard-working people all over the United States to come to the rescue of bad banking decisions, rotten investments, mortgages that were fraudulent on their face, but can't summon the political will to do something about 8 million families in America who are going to face foreclosure? That is where we are.

When I sat down with the banks, I said: I will work with you. Let us find a reasonable way so we can bring people to the table—such as that flight attendant—and find a way to work it through. Because at the end of the day, a foreclosure isn't good for anyone. A family loses their home, a neighborhood is ravaged by vacant property, the people next door lose the value of their home, the bank spends \$50,000, at a minimum, for expenses in a foreclosure, and then 99 percent of these boarded-up buildings, these foreclosed homes, are the property of a bank. How much time is that bank spending on

that property? How much worry do they have about the value of the neighbor's home? The answer is none. Banks aren't in the business of putting in windows and establishing security and cutting the grass and making the property look good. They move money around. But now they are becoming property owners of the most blighted properties in America.

Some banks are walking away from it, incidentally. The banks are walking away from the foreclosed property. I sat down with them and said: How can this be good for a bank? How can this be good for a family? How can this be good for the Nation? Let's sit down and work together. But I come today to the floor to tell you that despite months and months of heroic effort by my staff—Brad McConnell, who is here and who has worked tirelessly on this issue—and my own efforts to reach out to the banking community, only one bank is supporting this amendment to do something about foreclosure in America—one bank: Citigroup.

I can't tell you how many of these bankers have walked away. The American Bankers Association has been terrible—terrible. They will not even participate in a negotiation on dealing with this foreclosure crisis. The Community Bankers of America, a group I have respected over the years because they are closer to the people; they are the hometown banks—have walked away as well. They are not interested in this conversation, they say. The credit unions? Well, I will give them some credit. They did try. But in the end, they walked away as well. The big banks—JPMorgan Chase, you see them all over the United States—they were at the table until last week and then decided: No, we are going to walk away too. We are not interested in this conversation. Wells Fargo, Bank of America, and the list goes on and on.

If any of these names sound familiar, it is because they are surviving today due to taxpayer dollars. And you know what they say about these poor people who have lost their homes? It was a bad business judgment and people have to pay for their bad business judgments. Really? How many of these bankers paid for their bad business judgments, with their multimillion dollar bonuses, with the rescues we have provided from American taxpayers—hard-earned tax dollars sent their way? The fact is we have been kind to these bankers who have brought us into this crisis. Yet they are literally shunning and stiff-arming the people who are facing foreclosure. These banks that are too big to fail say that 8 million Americans facing foreclosure are too little to count in our political process, and they have walked out the door.

Well, I want to tell you, this amendment I am offering can save the homes of 1.7 million families. I wish we could save more, but the fact is we have this opportunity before us, and I think it is something we shouldn't ignore and we

should support. Some Members of the Senate voted against my amendment a year ago. I understand that. I heard them. They said: You have to sit with the banks and see if you can work something out. Well, we did, until they walked away.

What we offer today is significantly different than what we offered a year ago. We literally give to the banks control over whether a family in foreclosure can go into bankruptcy. We say that anybody facing foreclosure—who is delinquent for at least 60 days on a home that is valued at no more than \$729,000, with a mortgage that was written no later than 2008—has to show up at the bank at least 45 days before they file bankruptcy and present all the economic information, all the financial documents the bank would need for a mortgage—proof of income, indication of net worth. If the bank at that point offers them a renegotiated mortgage—a mortgage which will basically allow them to stay in the home, that reduces the borrower's mortgage debt-to-income ratio to 31 percent, which is the standard the administration is talking about, or offers hope for home refinancing—another program—and the person facing foreclosure does not take that offer, then that same family in foreclosure cannot use the bankruptcy court to rewrite the mortgage. So in other words, the banks ultimately have the key to the courthouse. If they make the offer and it is turned down, that is the end of the story.

What happens if they do not make the offer? Under this law, we would change the Bankruptcy Code as follows: Under the current bankruptcy law, if you are deep in debt and facing foreclosure, and you own several pieces of real estate—your home, a vacation condo in Florida, a vacation condo in Aspen, CO, and you are facing foreclosure on all three properties because of economic problems—you can walk into that bankruptcy court and the judge can say we will renegotiate the terms of the mortgage on the Aspen, CO, property—we will reduce the principal of the mortgage to the fair market value, the interest rate will be the current interest rate, we will add a little to it, and so forth and so on. The bankruptcy judge has that power for the Florida property and for the Colorado property. But the law prohibits the bankruptcy court from rewriting the terms of the mortgage of a person's home. Why? Why does that make any sense? If the bankruptcy court can rewrite the mortgage on your vacation condos, your farm, or your ranch, why can't they do it for your home? That is what this bill does. It gives the bankruptcy court that power. And in creating that power, it says to the bankers: Get serious.

The voluntary plans we have had for refinancing mortgages in foreclosure across America have been an abject failure. We have to have an opportunity here for the bankruptcy court to step in and make a difference, and

that is what we are trying to achieve with this.

I know my colleague, the Senator from California, is here on the floor, and I will yield to her in a moment. I have to leave the Chamber myself. But that is what we are proposing today. It is an amendment which we have worked on long and hard. It is an amendment which I think should be looked at in honest terms. My goal is not to put more people in bankruptcy court. My goal is to avoid it. Put them at the table with the banker at least 45 days in advance, avoid the bankruptcy court, avoid the foreclosure, avoid the boarded-up and burned-out building that happens to be right next door to the home you have worked so hard to keep and to maintain.

The Mortgage Bankers Association has claimed, in front of the Senate Judiciary Committee, that this is going to add cost to everybody's mortgage if in fact some people can turn to bankruptcy court. Let me first say that future borrowers aren't even eligible for this bankruptcy assistance. It ends as of January 1, 2009. Future mortgages, future foreclosures aren't even affected by it. It has an ending date.

We also have a quote—and I don't have time to read in detail here—from Adam Levitin, who has analyzed this and says the argument that interest rates will go up because of this provision is plain wrong.

Secondly, they argue that changing the Bankruptcy Code will cause uncertainty in the market. The American Bankers Association says it will add risk. I will tell you this: If you want uncertainty in the market, keep the foreclosures coming, one after another. Let them hit your neighborhood. Uncertainty about your home and its value and whether you can sell it is the reality of what they will face.

They say bankruptcy judges shouldn't be allowed to break the sanctity of the contract. Before we argue about the sanctity of a no-doc mortgage, before we argue about some of the predatory lending practices that led to this mess, let me tell you that the bankruptcy court takes on contracts every single day. That is the nature of the bankruptcy court. To me, that is an argument which goes nowhere.

They argue that allowing borrowers to modify mortgages in bankruptcy would shield them from the consequences of poor decisions. They call it the "moral hazard." In other words, take your medicine, America. You made a bad mortgage, you pay the price. That didn't apply when it came to bailing out these banks when we were asked for \$700 billion to make up for the mistakes of these banks. Where is the moral hazard there, as they run off with their parachutes and their bonuses? I don't buy that argument whatsoever.

Finally, they argue that restricting this amendment to subprime and exotic loans is a better way to do it. Well,

I can tell you, we know that isn't going to work. There are too many mortgages now in peril, way beyond the original subprime mortgages. And how do we explain to our constituents that we are providing special assistance to borrowers who took out a risky loan, such as a subprime, and ignoring those who have been trapped in other mortgages that create a disaster?

I am going to yield the floor to my colleague from California, and thank her for coming, and I want to tell you something: Her State has been hit harder than any other State. You ought to see what has happened in portions of California. She knows this issue personally, and I thank her, and I yield the floor to Senator BOXER.

The PRESIDING OFFICER (Mr. KAUFMAN). The Chair recognizes the Senator from California.

Mrs. BOXER. I thank the Chair, and before my colleague leaves the floor—and I have only 10 minutes, because of all the responsibilities we all have. I have to be somewhere in 15 minutes—I am here to stand with you, Senator DURBIN, in your courageous effort to stop thousands and thousands of homes from foreclosure and, frankly, to get to the bottom of this economic recession.

We know, because economists have told us, that the problems we are facing all start with the fact that we have had a collapse in the housing market. And, my friend, what you have done is you have taken on the special interests in a way that is very clear. I can only say that I hope when the votes are counted, the people who serve in the Senate do the right thing and support the Durbin amendment.

Mr. President, I stood on the floor of the Senate when we debated the Foreclosure Prevention Act a year ago—a year ago—and I described how hard the foreclosure crisis was hitting this Nation, in particular my State of California, the largest State in the Union. And as we know, what happens in California, good and bad, spreads throughout the country. They say when California sneezes, everybody else gets a cold. The truth is we are having great problems in California, starting with the housing crisis.

I am sorry to say that a year later, after I stood here and said this is a crisis we must address and must address in a far-reaching way, the situation is bad and, frankly, it could well get worse. If we turn our back on the Durbin amendment, it will surely get worse. Foreclosure filings were higher in 2007 than they were in 2006. They were higher still in 2008. And they are at a pace that is going to have them go even higher in 2009. One year ago, when I stood on this floor, we were expecting then 2 million homes to be lost to foreclosure over the course of the crisis. Now that number is expected to be over 8 million homes. If we turn our back on the Durbin amendment, what we are essentially saying is: Oh, the status quo is fine. It is all working out.

The Durbin amendment is a very moderate amendment. It basically says

if a bank and a borrower don't sit down and try to renegotiate a mortgage and reach an agreement on how they can restructure that mortgage so the borrower can stay in the home—and the restructuring is very clear; it should be about 31 percent of income—if that effort is not undertaken and the borrower files for bankruptcy, the judge can look at how to restructure that mortgage. I do not understand how anyone could vote no on this, except if they are dancing to the tune of the banks.

Let me say this: I work with the banks in my State. I respect them, when they are doing the right thing, when they are acting in the public interest, when they are lending to people who deserve to have those loans, when they are not redlining, when they are being fair. I support them wholeheartedly. Oftentimes they are very good neighbors and they donate to charities in the counties, in the communities, in the State of California. But when they are wrong, they are wrong. For them to not work with Senator DURBIN and to walk out of the room when he has modified his proposal in such a way that it is so reasonable? As Senator DURBIN has said: When someone goes into bankruptcy the judge can look at everything, all of their assets—their second homes, their furniture, their cars. But they are prohibited from looking at that first and, by the way, most important asset—the home residence. Why? Because banks over the years have said we do not want our books to look worse, we don't want to take any losses, and we are not willing to budge.

This is a crisis. All of the fallout in the financial sector comes down to the fact that there were entire new instruments created around the value of a home: derivatives, all kinds of paper, all kinds of insurance—all on top of a home. So when the home goes, it goes. The house of cards falls. That is what has happened and one of the reasons is these foreclosures. We can stop a lot of these foreclosures if we adopt the Durbin amendment.

My State is having a very hard time. We can see the number of seriously delinquent homes in my State going up here on this chart. This is 2008. All the way up here is over 8 percent and the actual foreclosures at over 4 percent. This is, in many ways, a virus that is spreading. What happens when a home is abandoned and no one cares about it because many times the banks let it go? Frankly, the mortgage is held by so many people that nobody makes sure the home is kept up, that the pool doesn't become a hazard in the community. We have pictures I showed the last time of a vacant pool being used by kids as a skateboard park. That was probably one of the better things that was happening in the neighborhood. Homes are being looted. The value of the next-door home goes down and the crisis continues to spread.

Look at what is happening in my State. One out of every 24 homes in

Merced has filed for foreclosure. In Stockton, 1 out of 27. Riverside-San Bernardino, 1 out of 28. Modesto, 1 out of 29 homes.

When you go to these beautiful areas of my State, 1 out of 27 homes in Stockton has filed for foreclosure. In Bakersfield, 1 out of 37; Vallejo, 1 out of 37; Sacramento, 1 out of 47. It goes on and on and it is getting worse, and the Durbin amendment will help us. Why? These are just numbers. There are families in these homes, obviously. If they have a chance to restructure their mortgage, then they might well want to use the opportunity to do so in a bankruptcy court.

We all know that our home—those of us who have been fortunate enough to buy a home—in many cases is our biggest asset. When that home goes down in value, that is bad enough. But when we are in a mortgage that suddenly ticks up and we cannot afford to stay in our home and we suddenly lose our job and have to take a job that is a lower paying job, because of the ramifications that this is having on the economy, we are in trouble and our families are in trouble.

At the end of March, Californians experienced 363,891 foreclosures since 2007. Think about it, more than 300,000 of our families have experienced foreclosure since 2007. We had 6 of the top 10 and 13 of the top 20 metro areas with the worst foreclosure rates. Today we have another opportunity to help stem this crisis. If we miss this opportunity, it is our fault and we should be judged on this vote. That is how strongly I feel.

The bill before us makes changes to the HOPE for Homeowners Program, such as reducing fees and administrative requirements to make the program more attractive to lenders and borrowers. It provides a safe harbor against lawsuits to protect servicers who participate in the mortgage modification program. That is all good and it is helpful. But the one piece that is missing is the Durbin amendment, which would allow borrowers at risk of foreclosure to receive assistance from the bankruptcy court in restructuring their loans so they can keep their families in their homes.

I have met children who have said they cry themselves to sleep every night because they think they are going to lose their home, and their home is their castle.

For us to turn our back on the Durbin amendment for some rationale that, when stripped away, comes down to "because the banks don't like it," would be a travesty of justice for these children.

I believe had Senator DURBIN's proposal been passed last year we would have saved hundreds of thousands of homes nationwide. It is as simple as that.

We are saving vacation homes. We are saving automobiles. We are saving all these other assets which a bankruptcy judge can in fact restructure.

But the main thing we should be saving, the residential home, is not allowed to be brought up in bankruptcy unless we agree to the Durbin amendment.

I have to say, Senator DURBIN is a great negotiator. I have served with him in Congress since the 1980s and I know he listened to the bankers. I know he changed and modified his amendment consistent with what they said and consistent with President Obama's housing affordability plan. Again, the borrower cannot seek a modification through bankruptcy unless the borrower has gone to the lender and said let's negotiate. If that doesn't bear fruit, then they can bring it into the bankruptcy court.

President Obama's housing plan gives great incentives to lenders to make loan modifications. But his plan also included the contingency that a borrower could seek relief through bankruptcy if all else fails. This is a critical additional incentive to ensure that lenders and, frankly, borrowers do the right thing. It says a borrower and a lender must sit down and try to resolve the mortgage problem before the borrower can go to court. We believe, even with the changes that Senator DURBIN made, 1.7 million homeowners could have their homes saved.

Let's think about it—1.7 million homeowners. Almost 2 million homeowners. That is larger than the populations of some of our States. We can help 1.7 million homeowners.

We have allocated trillions of dollars to reduce the threat to the financial system posed by toxic assets. That was the hardest vote I had to make in my lifetime. It was hard. I lost sleep over that vote. But I was told by Ben Bernanke and Hank Paulson that the whole financial system could collapse around us, we would lose capitalism, we would lose our free market system, we would be in panic, and I voted yes to trillions of dollars, because I am very worried. I shouldn't say trillions—hundreds of billions.

How do we look ourselves in the mirror if we have voted billions, hundreds of billions of dollars to save the banks, even though we know some of them have taken advantage of that, and companies such as AIG have taken advantage of it, and they have given these huge bonuses to people who do not deserve them? We know what a nightmare that is. But how do we do that in the name of saving the financial system and turn our backs on homeowners, middle-class people who are suffering because of the fallout of these bad financial decisions?

If we bow to the banks on this amendment, I personally think it is a stain on this Senate, a stain that cannot be rubbed out. This is an amendment that is fair. This is an amendment that is modest. This is an amendment that has been negotiated. Senator DURBIN has done everything in his power to reach agreement. What remains is a very modest amendment.

I will close by again explaining it. The Durbin amendment basically says that when homeowners are in trouble and at risk of losing their home and going into bankruptcy, if those homeowners reach out to the lender and they sit down and try to renegotiate a package on those mortgage payments, if they do it in good faith but it doesn't work out, then and only then can a homeowner go to bankruptcy court and ask the judge to please help and restructure their mortgage.

That passes every test of fairness. That passes every test that you would say an amendment should pass: fairness, justice, pragmatic, listening to both sides.

I am here filled with hope that we can send a message today to the American people that we stand on the side of our families. Yes, we will work with the banks and try to get them to do the right thing. DICK DURBIN has done so. But if they are stubborn and they will not agree, and because they are stubborn and they will not agree, it means this housing crisis will continue to deteriorate, I have to say I am going to be very sad if this Durbin amendment does not pass.

This is the time to act. I said it a year ago. I predicted worse things would happen. I didn't do it out of whole cloth. We have the economists in our office, in our State, who see this. We need to act now or we will be back here in a year with the Durbin amendment. It will fly through here and people will say, and I predict: Gee, I was wrong.

Let's not go there. Let's do this. It is the right thing to do. It makes this bill strong and it does what the President intended when he originally sent us his housing rescue plan.

Mr. President, I want to say, although he is not on the floor, to our leader on this, DICK DURBIN, how much I respect him and admire him. I know the courage it takes to stand up to the special interests. He has done it in behalf of the families of Illinois and this great Nation. I hope he will prevail on this amendment.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I ask unanimous consent the time be equally divided on the quorum call.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I now suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MERKLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MERKLEY. Mr. President, I rise today in strong support of the bankruptcy lifeline being offered by the senior Senator from Illinois. This bankruptcy lifeline is at the core of the housing bill passed by the House of Representatives and now under debate today in the Senate.

In the last few years, millions of families were led into unsustainable home mortgages that pushed our country into an unprecedented economic crisis. With the collapse of the housing market, many are trapped in mortgages with unbearable interest rates and principal significantly higher than market values.

No one wants to walk away from the home they purchased, with neighbors they like, a school their children are doing well in, a town they feel comfortable in, but many cannot afford to pay under the terms of the mortgage they currently hold.

I have already spoken on this floor about the need to ban deceptive practices in mortgage brokering, practices that steer unknowing customers into complicated and expensive mortgages. A ban on steering payments and prepayment penalties would go a long way toward ensuring that we do not get into this situation again.

But right now we are confronted with what to do about those who already put their life savings on the line to attain a slice of the American dream and who are on the verge of seeing that dream shattered.

Unfortunately, we are now in the midst of a recession—there is little prospect of housing prices returning to their bubble levels for many years, and almost 50,000 Americans are losing their homes every week to foreclosure. This is a sad and destructive phenomenon. Foreclosure tears apart neighborhoods and destroys family savings. It also has proven to have a devastating effect on our financial system.

In fact, subprime foreclosures are, as we all know, the primary reason our banks have been hemorrhaging money. The billions in write-downs our banks have taken and the billions of taxpayer monies our government has placed into them is due to the collapse of the housing market and the decline in the value of subprime—and now prime—residential mortgage-backed securities. All the TARP money in the world will do little for the banks unless and until we stabilize housing.

Fortunately, we have begun to get on the right path with housing. The Obama administration's Making Home Affordable plan takes a commonsense approach of lower a borrower's monthly payments. Similarly, the Hope for Homeowners Act, with a few fixes, has great potential to help. But neither plan has the ability to take on the major problem still outstanding in the

housing market—underwater mortgages. Senator DURBIN's amendment before us today tackles the problem head-on.

What does this amendment do? In practice, its main use will be to force loan servicers to sit down and genuinely negotiate a reasonable mortgage adjustment. My office gets calls every day from constituents in Oregon who can't get a response from their lender or loan servicer. One constituent called her bank 13 times and never was able to talk to the right person. Sadly, she, like so many others, ultimately lost her home.

The Obama plan will improve the situation by offering a number of carrots to lenders and servicers. But we also need to hold out the possibility, when servicers don't respond, of providing a lifeline opportunity.

My colleagues are all familiar with the program "Who Wants to be a Millionaire?" When there is no ability to answer the question, there is a lifeline. In this case, when there is no ability to connect with the servicer to have a conversation about a win-win solution—a solution that is right for the homeowner because they are able to stay in their home, a solution that is right for the mortgage owner because the mortgage continues to be paid, albeit at somewhat lower rates—it is still right because the mortgage owner doesn't benefit from foreclosure if they only get 50 cents on the dollar. This is a win-win win because investors affected by the Federal financial circumstances find an improved situation when fewer homes go into foreclosure. It is a win for the community because we don't have an empty house on the block driving prices down further. We have an opportunity that is right for the community and for the mortgage owner and for the homeowner and for the economy. That opportunity is before us today in this amendment.

Certainly, even with adoption of this amendment, some families will need to enter bankruptcy, which is not an outcome we desire for any family but one that some may have to consider. Remember that this bankruptcy power is not extraordinary. A Federal bankruptcy judge already has the power to modify debt on a vacation home, an investment property, a credit card, a car loan, even a yacht. Why can't the court make any modification to a family's primary assets, the important piece of the American dream known as home ownership? I can think of no good reason.

Some have argued that allowing judicial modification to mortgages on a primary residence could increase interest rates on future home loans, perhaps by as much as 2 percent. But does this stand up to examination? After the current bankruptcy court system was set up in the 1970s, some courts interpreted the Bankruptcy Code to give them authority over mortgages on primary residences. This divergence of practice went on until the early 1990s.

Thus, we have a living test case. Studies have been done examining the interest rates in both types of districts—those that allowed bankruptcy modification and those that did not—and found no difference in the interest rates. Even if they had, the amendment before us today would not present this problem because, in the course of conversation, in the course of working out an agreement, only loans originated before January 1, 2009, are eligible for bankruptcy modification, only existing loans, not loans going forward. This primary concern that has been raised has no merit.

Let me emphasize, again, that reductions in principal negotiated in bankruptcy court will be good for the banking system. Credit Suisse estimates that 9 million families may lose their homes in the next 4 years. Foreclosure is a disaster for the family. Large numbers of foreclosures destroy home values across neighborhoods. But from the lender's standpoint, foreclosure means they are likely to net only 50 or so cents on the dollar. In the case of any homeowner with a reliable income—and chapter 13 bankruptcy is only for people with a continuing source of income—it is much better for the lender if the homeowner remains in their home and makes a monthly payment, even if it is at a somewhat reduced rate, rather than turning the keys and putting the property into foreclosure.

A couple of additional points: This proposal will not cost the taxpayer one dollar, nor will it overwhelm the Federal bankruptcy courts. The same claims were made in 2005 prior to passage of the Bankruptcy Reform Act. But in fact, the courts have handled the increase in caseload quite successfully. My office has talked with bankruptcy judges, attorneys, academics across the country. All are confident that the court system can handle any increase in caseload that would result from this legislation.

This legislation is important to Oregon. It is important to the citizens in my State. According to data compiled by Moody's Economy and the Center for Responsible Lending, without this bankruptcy lifeline, over 15,000 families will lose their homes to foreclosure. I imagine the situation is quite similar in every State. The cost of these foreclosures has been magnified several times over, costing those citizens whose homes neighbor the foreclosed sites nearly \$1.5 billion in equity. That is in Oregon alone. Will those neighbors then be underwater with their homes worth less than what they owe on their house, and how long will this cycle continue?

The bankruptcy lifeline amendment offers us a win-win solution. Forcing real mortgage modifications will keep Americans in their home, arrest the decline in property prices, and stabilize the balance sheets of banks.

I urge colleagues, in the strongest possible terms, to provide this win-win opportunity. We have done so much to

help Wall Street. It is time to help working families across America, keeping them in their homes and stabilizing the financial system.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I compliment my colleague from Oregon on some excellent remarks. I thank him for being so steadfast in working toward this issue. He has spoken up many times at meetings and caucuses about it.

I rise in support of this amendment that would alter the Bankruptcy Code to allow bankruptcy judges to modify primary home mortgages. By now we are all familiar with the problems. Too many people borrowed too much money from too many banks that were too willing to lend. There is plenty of blame to go around. Now millions of American families are facing foreclosure over the next few years as a result of exotic mortgage products such as 2-28s, pay-option ARMs, and interest-only loans that disguise the full cost of home ownership. We have been pushing banks to do loan modifications for more than 2 years now and, frankly, we don't have much to show for it.

While I am optimistic the administration's plan will produce a significant improvement in modification efforts, it is also certain there will be intransigent servicers and investors who will try to block the process, to squeeze every last cent out of a home, even if that means it is costly for their family, their community, and the country at large.

We have offered lenders and servicers plenty of carrots, but it is unfortunately clear we also need a stick. The reason the programs in the past have largely not worked is it was just carrots and no stick. We need both. That is what the legislation gives us, leverage to push servicers, lenders, and investors to act in the best interests of the economy as a whole.

This amendment to the bankruptcy law is so important because of the changes the mortgage industry has undergone in the past few decades. It used to be that when one wanted a mortgage, they would go to their local bank where they would lend the money and collect payments for 30 years. That meant if one ran into trouble, they had a familiar friendly face to turn to, someone who knew them and their family and who had an interest in helping work out the mortgage payments so they could stay in the home. It also meant the bank had an interest; one entity had an interest in the whole mortgage. It wasn't chopped up in so many pieces. That is what has happened.

Over the past two decades, with the growth of securitization, it has all changed because the mortgage has been divided into pieces, sold off to investors around the world. They are often difficult to identify and impossible to contact. Their primary concern is

squeezing every last cent out of the mortgage loan, whatever the impact on families, on homeowners. That means if the best outcome for even one of those investors is foreclosure, a homeowner is not likely to get the help he or she needs to stay in their home.

One other point that is vital: It may be that there are 40 investors who each have a piece of the mortgage. It may be that 39 of them have an interest in a loan modification. But if that one intransigent investor, who probably got the highest rate of interest because he or she took the most risk, says no, the whole process comes to a halt—not only bad for the poor homeowner but bad for the other 39 investors. It is bad, most of all, for the economy as a whole. It is not that one intransigent investor might say: Look, I will lose all my money if there is a loan modification. If I sit and wait for 5 years, then maybe housing prices will come up to where they should be and I will get my money back. In the meanwhile, the economy goes down the drain for everyone, because the more foreclosures there are, the lower housing prices get. The lower housing prices get, the less likely banks are to lend. The less likely banks are to lend, the less money is in the economy. The recession gets worse and worse and worse.

It is not only a problem for the homeowner when there is an intransigent bondholder who will not yield; it is a problem for the other investors who will lose money in foreclosure.

It is a problem for the neighbors of the homeowner whose property values are going to decline and for the country as a whole since our housing markets are already inundated by a glut of unsold homes, driving down home prices and destabilizing the financial sector.

How do you get that intransigent bondholder to the table? Well, there is a contract. We cannot break a contract by law. But the one place in the U.S. Constitution where a contract can be modified is bankruptcy court. Bankruptcy courts are the only constitutional way to overcome the securitization contracts and restore some power to the homeowner himself or herself.

Moody's Economy.com estimates without this amendment 1.7 million loan modifications that would have happened will not occur. These figures show that 1.25 million homeowners whose servicers are unwilling or unable to help them will not have the protection of the bankruptcy courts, and almost half a million homeowners who would have gotten modification offers will not because servicers or investors will calculate that a foreclosure is worth more to them than a modification.

The proposal is the result of weeks and weeks of talks that never yielded compromise that we hoped for. I see my colleague from the State of Illinois, Senator DURBIN, in the Chamber, who worked so long and so hard on this

issue and deserves all of our thanks. He was in the middle of trying to get this done. Senator DODD and myself tried to help but to no avail. It is clear that parts of the mortgage industry were never interested in meeting us halfway. As the negotiations went forward, they moved the goalposts back and back and back. And when concessions were made that were well beyond what anyone thought, they walked away because they never wanted to deal.

Hindsight is wonderful. It is unclear if those who entered the discussion—at least some of them—ever entered in good faith. But the industry stakeholders, who obviously have the most to lose, ought not hold total sway. Just because they walked away from the table does not mean we cannot vote our conscience on a proposal that would help preserve the American dream for millions of families and get our economy going again.

What makes me so eager for this proposal to pass, and why I worked long and hard, is that as much as I want to help individual homeowners—and, believe me, I do—our economy is at risk. Millions who might rent or have paid their mortgage could lose their jobs, and it all comes down to this proposal. Because if we decrease foreclosures, we will find a floor to the home market, which will then allow banks to lend, which will then get our economy going. It is like the knee bone; to the thigh bone; to the hip bone. Foreclosures are connected to the housing market; the housing market is connected to the health of banks; the health of banks is connected to the economy.

So when President Obama announced his foreclosure prevention plan, it included lots of lucrative incentives to lure banks to participate, but it called for some tough medicine: this bankruptcy proposal. And both are needed. We need carrots and sticks. The President's housing plan will not be as effective if parts of it are sacrificed for political expediency. Loan servicers should not get to accept the parts of the President's plan they like and reject others. That was never the deal.

To reject this proposal is to provide only sweeteners and no stick to get banks, servicers, and investors to modify troubled loans. The bottom line is fewer homes will be saved for American families. The defeat of this amendment would be a sad day for homeowners, for the housing market, for financial institutions, and for the overall economy. Allowing that to happen is unconscionable.

I urge my colleagues to adopt this amendment. We have an opportunity to make a major dent in the housing crisis and prevent further declines in home prices.

Let's understand, once again, the housing crisis remains at the core of our economic problems. As long as home prices continue to decline—and without this legislation they are far more likely to—our economy remains at grave risk of further contraction. We cannot let this opportunity slip by.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from New Mexico.

Mr. UDALL of New Mexico. Madam President, I rise today because I believe the Durbin amendment we are considering today is more than a tool for solving America's current economic problems, it is the right thing to do for millions of American homeowners.

Like many of you, I had the opportunity recently to spend 2 weeks with my constituents talking with people at townhalls and community get-togethers around New Mexico. I heard one message over and over. My constituents feel that too often America has one set of rules for the rich and powerful and a different set for working families.

Wall Street can fail and still make millions. On Main Street, even people who work hard get dragged down. Irresponsible lenders thrive while credulous borrowers lose their homes. Everywhere you look, you see middle-class Americans paying for other people's mistakes. It does not seem fair.

Of course, the law rarely contains an explicit double standard. But today we are dealing with a situation in which it does.

If a real estate speculator borrows millions to buy a city block and then finds himself unable to pay, he can walk into court and ask the judge to reduce the principal on his loan.

If a working mother borrows \$30,000 to buy that first home for her children, she is stuck with that loan. If she has lost her job, she is stuck with that loan. If the value of her house has plummeted, she is stuck with that loan. If she was the victim of predatory lending, she is stuck with that loan.

I have yet to hear a good reason why that working American should not have the same rights as every real estate speculator and vacation homeowner in this country. My constituents do not think that is fair. And you know they are right.

Sometimes you hear people defend unfair rules because they are good for the overall economy. They say that efficiency should be prized over equity. But that argument does not work here. By limiting judges' ability to reduce the principal on home loans, we are delaying the resolution of this country's mortgage crisis. Homeowners continue to struggle with loans they cannot pay, and the toxic assets based on those loans remain on the balance sheets of America's financial institutions.

Elizabeth Warren, the head of TARP'S Congressional Oversight Panel, has made the point very clearly. She says:

The law recognizes everywhere the importance, in a financial crisis, of recognizing losses, taking the hit and moving on.

That is why she supports the mortgage modification provision we are considering today. When judges have the power to provide a fair resolution for banks and borrowers, we will be one step closer to recognizing those losses

in our housing sector, taking the hit, and moving on. In other words, the Durbin amendment puts us one step closer to fixing the financial system. For this proposal's benefits will not be felt primarily on Wall Street. Credit Suisse estimates that as many as one in six mortgages in America will be lost to foreclosure in the next 4 years. Homeowners know what happens when a neighbor goes into foreclosure. The whole neighborhood takes a hit. Property values drop. Local governments face another drain on their resources. In some cases, the foreclosed property becomes a magnet for crime and an embarrassment to the community.

For most Americans, their home is their largest investment. The best way to protect this investment is to stop unnecessary foreclosures. In my home State of New Mexico, the Durbin amendment would protect an estimated 6,665 homes and almost \$376 million in equity. Without spending a dime in Federal money, this Congress can make a significant contribution to stabilizing my State's housing market and keeping thousands of families in their homes. This is not a tough choice.

Opponents of this provision make two related arguments. First, they claim a mortgage modification provision will raise the cost of home loans. Congress has heard testimony about this issue, and the evidence suggests otherwise. I will not go too deeply into this right now, but I encourage you to look at the testimony before the House Judiciary Committee of Adam Levitin of Georgetown University Law Center. Professor Levitin is one of a chorus of academics who has poked holes in the arguments against mortgage modification.

Opponents of mortgage modification also argue that loan restructuring should be handled by bankers and borrowers—not judges. I could not agree more. Unfortunately, banks have so far been very reluctant to voluntarily restructure home loans despite a host of Federal incentives. A considerable body of evidence suggests that banks would actually do better if they were more willing to restructure loans. Foreclosure is bad for everybody, and bankruptcy is even worse.

Congress and the President have worked hard to encourage banks to modify home loans. We have handed out carrots like a farmer's market, and yet we still have a foreclosure crisis. It is time to give the homeowners a stick.

The Durbin amendment does not let every homeowner march into court and demand a principal reduction. Banks have the opportunity to work with homeowners on a reasonable compromise. As long as banks are willing to negotiate, they will not face a court-ordered principal reduction.

All this legislation says is that banks cannot ignore their borrowers. They cannot stand around while working families struggle with unpayable loans. That sounds fair to me.

The debate on this issue can get extremely complicated. But the final analysis is simple: The current system is unfair. It is bad for working families, and it is devastating for the American economy. The Durbin amendment is a step in the right direction. I hope you will join me in supporting it today.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the Senators from Oregon and New Mexico, as well as the Senator from New York and the Senator from Connecticut, for speaking on behalf of my amendment.

I would like to make a unanimous consent request that has been cleared by the other side: that of the 4 hours that have been set aside for this debate, the last 30 minutes be preserved and equally divided between the two sides, with 15 minutes to a side; under the custom of the Senate, if we go into quorum calls, time is taken equally from both sides. We have actively spoken on this amendment on our side, and no one has appeared yet, though I think they will soon, on the other side.

So I ask unanimous consent that notwithstanding the usual tradition of quorum calls taking the remaining time, dividing it by half, that the last 30 minutes be insulated and protected from that, and it be allocated 15 minutes to a side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut.

Mr. DODD. Madam President, let me, first of all, thank our colleague from Illinois for his tireless work on behalf of this idea. I joined him, along with Senator SCHUMER, early on in recommending a proposal like this.

History is always a good source to go to. Back in the spring of 1933—which is about as close an example we could probably find over the last 100 years that compares to the days we are in today. Of course, that was the height—or the beginning—of the Great Depression. In 1929, certainly, it all began.

After the election of 1932—during that now often repeated “first 100 days” of each administration—and that was the first 100 days ever talked about. It was the Roosevelt administration. The inauguration was in March of 1933. Inaugurations occurred in March in those days, not in January. So that 100 days ran from March until June. One of the first things the new administration did in the face of significant foreclosures across the country—and there were significant ones. They were major. Those days were, in many ways, far more difficult than the ones we are in.

These are bad days, obviously, with 10,000 homes a day going into foreclosure, with 20,000 people a day on average losing their jobs. Retirement accounts are evaporating. We have all heard about, read about, and know people that has occurred to.

But one of the things the new administration did in those days was to go out and actually purchase the home mortgages. The Federal Government actually did that. In order to stem the tide of foreclosures, the U.S. Government decided in those days that it would take over that responsibility. They did other things as well: put capital into banks to stop the runs that were occurring across the country—major steps. But in home foreclosures, they took the unprecedented step of trying to stem that tide, knowing how much damage foreclosures could cause, not only to families and neighborhoods and communities but also to the financial system.

Senator DURBIN is not advocating anything quite as revolutionary as the Government acquiring the mortgages of every home. While some have made that suggestion, he is not doing so. What he is suggesting is modifying the bankruptcy laws of our country for a limited amount of time, in a very narrow set of circumstances, to say: Where your primary residence is concerned—and for those who have not followed the debate, let me explain.

There is no restriction in a bankruptcy court for a bankruptcy judge to modify—or at least to negotiate—the modification of your mortgage if you have a vacation home or if you have a pleasure boat and have a mortgage on that. The bankruptcy judge can modify the mortgage on that beach house, that mountain cabin, that yacht you may have. That is perfectly legitimate under bankruptcy laws. What you are not allowed to do, if you are a bankruptcy judge, is to modify the mortgage on a principal residence.

I don't know if statistically what I am about to say is accurate. I suspect that most Americans who have a principal residence don't have vacation homes. I know some do, and that is perfectly legitimate. I am not arguing that you shouldn't have one. But explain to me, if someone will, the distinction on why a vacation home, a yacht, a mountain cabin—as nice as it is to have one—ought to be able to be subjected to a workout with the mortgage involved, and yet, for the person who only owns one home, as most do—you own one house—a bankruptcy judge is prohibited from engaging in a workout between the lender and the borrower on that principal place of residence. For the life of me, over the last number of months we have been involved in this debate and discussion, I have failed to hear an adequate explanation of why there is a distinction on a principal place of residence where a mortgage is involved and there is no hesitation, no restriction whatsoever, on whatever other number of homes you may have. Some have a lot more than two; some have three, four, and five. All of those can be subject to a workout, but not a principal place of residence. That is all we are trying to do here. Not forever, not looking back, not looking forward forever—Senator

DURBIN's amendment says for a limited amount of time, under limited circumstances—under the total control of the lender, by the way, because if you turn down a workout as a borrower, then basically you lose the option of working it out.

It is so narrowly drawn under these circumstances that, for the life of me, I don't understand the objection. It is one of those moments where I try—when preparing for debate, we all ask: What is the other side going to argue? So I thought last night, I have to get ready for the other side. I tried thinking through what is the argument I would make if I believed this would somehow cause great harm to the economy, was going to flood our courts or was going to require hundreds more bankruptcy judges to deal with it. What is the argument I would make to my constituents and to the American people that we ought not allow a bankruptcy judge to sit down between the borrower and the lender and work out a financial arrangement that allows the borrower to stay in their home, the lender to be paid—at least getting something back—turning that property into a foreclosed, vacant property, contaminating the value of every other home in that neighborhood. What is the logic? For the life of me, I can't come up with that, and I have tried.

So I would urge my colleagues, as you are thinking about this and listening to these debates, why can't we do what the Senator from Illinois has suggested: For a limited amount of time, try this. It is not forever. It just might do what the authors have suggested, and I am proud to be one of them. It might just do what we failed to be able to achieve despite the efforts of all of my colleagues here.

As chairman of the Banking Committee, we have come up with all sorts of very complicated proposals to try to assist homeowners, and I regret to report that while I think these ideas have great merit and we have all tried hard, they have not been terribly successful, despite the good intentions of everyone to work it out. This is the one idea we have not yet tried to make a difference in the foreclosure crisis.

Before the Sun sets tonight, 10,000 families are going to potentially lose their homes, and that will be true tomorrow and the next day and the day after that. Just think about that. As we all go home tonight to our respective dwelling places here, 10,000 of our fellow citizens in this country will end up losing their homes. They have to come back and face their families. Imagine, if you will, if you were in that position, walking into that house tonight and facing your children and facing your family and saying: We can't make this happen financially. We are being pushed out of this house.

This body cannot, for a limited amount of time, under limited circumstances, try something that might make a difference in that family's condition? I hope, in these very difficult

days—if almost 100 years ago, 90 years ago, another body sitting here in the wake of economic circumstances that were as trying as they were could do something as unprecedented as the Government actually purchasing the mortgages, can we not now ask the Federal bankruptcy courts to sit down and try, for a limited amount of time, to make it possible for that family to stay in their home?

It may not work in every case. The Senator from Illinois has pointed out that of the potentially 8 million foreclosures, his bill may only affect 1.7 million of the 8 million, and for a lot of people, this won't even work, regretfully. But for 1.7 million, it might just make a difference to those families. The value of that—how do I put an economic value on that? What does it say to a family who can stay in a home they have bought, they watched the value decline—the mortgage probably exceeds the value of the home in many cases—but that sense of optimism and confidence, that family staying together during very difficult times?

If you are the next-door neighbor, you live down the block, what happens to the value of your home? We know what happens. In fact, that very day, the value of that home that is not in foreclosure and there is no threat of it, but your neighbor's home now declines by as much as \$5,000, then, of course, that property and those other properties could fall into a similar situation. All of a sudden, what was otherwise a healthy neighborhood—people meeting their obligations, equity in their homes—all of a sudden, you watch a neighborhood begin to decline. Just imagine, if you would, you are in the market to buy a home and you are riding down that street and you see a couple of places you might be interested in buying but you see foreclosure notices up on two or three. How willing are you going to be to buy a home in a neighborhood where there are foreclosures? So there is a contagion effect, a ripple effect, beyond just the plight of that family, which ought to be enough motivation to try to make a difference, but if you are not impressed by that, think about that neighborhood and community.

In the city of Bridgeport, CT, in my State, there are over 5,000 homes in that city that are subprime mortgages in danger of going to foreclosure—5,000 homes in 1 city. I don't need to tell anyone in this body what that will mean to that community. The tax base gets lost, but far beyond the financial implications is what it does to the heart of a community, what it does to the heart of a neighborhood, what it does to the heart of a family.

So all we are asking for with the Durbin amendment is let's try this for a limited amount of time to see whether it will make a difference. Maybe it won't achieve the results we authors claim it will, but is it not worth a try to see if we can't bring that lender and that borrower together, to work some-

thing out so they can stay in that home? The lender gets paid. It seems to me that has to help.

I agree completely with my colleague from New York, Senator SCHUMER, who made the case, and did so simply. There is a direct connection here. If we are unable to get our housing situation stabilized, all of these other efforts we are making to get the financial system working are not going to succeed. At the root cause of this issue is the residential mortgage market. The failure of us to reach that bottom—to begin to see these values improve and people out purchasing homes will also be not only indicative of the direction we are heading in but also essential if we are going to recover.

Beyond the issue of housing and what happens to families, the very heart of the economic crisis, its roots, began in the housing market. I believe very strongly, as others do who are far more knowledgeable about macroeconomics than I will ever be, that our inability or unwillingness or failure to address the residential mortgage market will make it almost impossible for us to get the kind of recovery we are all seeking on the larger economic issues.

So I wish to commend my colleague from Illinois. He has worked tirelessly. He has brought together the financial institutions. I know many of them mean the very best. There is no ill will involved in this, I presume. I think there is a culture that goes back a long time which says that if a house is in foreclosure or about to go into it, get the family out, put it on the market, sell it to someone else, because the likelihood of that family redefaulting is pretty high. That may be true statistically, but it seems to me that in these circumstances, we are dealing with something very different, far more pernicious, far more widespread, with far greater implications. So even the best argument one might make that historically you do better in getting an economy back on its feet by allowing these properties to go into foreclosure, I think all of us recognize, with the numbers we are talking about here, that accepting that kind of conclusion could be disastrous, as it has proven to be.

I recall January and February of 2007. I became chairman of the Banking Committee for the first time in January of 2007. We had a couple of hearings on currency manipulation, I believe it was, in those days in January, but the first hearings I held in February of 2007 were on this issue. In the 110th Congress, I think we had 80, 82 hearings, and a third and a half were on this subject matter as we tried over and over again to get the industry to step up, to come up with various ideas that would mitigate the foreclosure problem.

I recall at the very first hearing we had a witness who was very knowledgeable about housing issues, and he testified that he thought there might be somewhere between 1.5 million and 2 million foreclosures. He was sort of

ridiculed because these numbers were hyperbolic; this was an exaggeration of what would happen. In fact, the critics were correct. It was. He was wrong. It wasn't 1.5 million or 2 million; it has now become 8 million. So those dire predictions in February 2007 have proven to be painfully off the mark because, in fact, the problem is a lot worse.

I believe very strongly that had we in 2007 been able to convince the previous administration to step up and engage this issue in 2007, and even a good part of 2008, we could have avoided what we went through last fall and are going through today as we try to get this economy back on its feet again. But there was tremendous resistance to doing anything despite countless meetings we had, including with the financial institutions, where commitments were made in March and April of 2007 to actually sit down and engage in a workout with borrowers and lenders. None of that ever really happened at all. The numbers are embarrassingly small where workouts occurred, despite the efforts to achieve this without going through a legislative proposal.

Of course, the idea of modifying the bankruptcy laws was one that Senator DURBIN raised early on. We were unable to get it done. Today, we are trying one more time, in a far more constricted and narrow construct of this proposal, over a limited period of time, to affect as many people as possible.

This amendment would also preserve some \$800 billion in home equity for neighbors, we are projecting. The list I have of just the properties that could be affected—in my own State, some 15,000 homes could be saved by the Durbin amendment. Looking down the list, the numbers are stunning. In California, I think the numbers I saw are 385,000 homes could be saved by the Durbin amendment. I see my friend from New Mexico is here, and there we are talking about over 6,000 homes would be affected in New Mexico. In the State of Oregon, it is like Connecticut. Over 15,000 homes would be affected, I say to my colleague from Oregon. In North Carolina, I am looking at 38,000 homes, it is projected, could actually be saved from foreclosure, the State of the Presiding Officer.

Madam President, I ask unanimous consent that this list be printed in the RECORD so Members can actually look down and see what a difference this amendment could make in their State.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HELPING FAMILIES SAVE THEIR HOMES ACT
DURBIN AMENDMENT STATE-BY-STATE IMPACT

By creating stronger incentives for the creation of voluntary mortgage modifications, the Durbin amendment to the Helping Families Save Their Homes Act would prevent 1.7 million mortgages from falling into foreclosure and would preserve over \$300 billion in home equity for neighboring homeowners who have made each of their own mortgage

payments on time (according to estimates from Moody's Economy.com and the Center for Responsible Lending). Based on that estimate and the relative impact of the foreclosure crisis throughout the country, below are state-by-state estimates regarding how many families would save their homes under the Durbin amendment and how much equity would be preserved by neighboring homeowners.

State	Homes saved by the Durbin amendment	Home equity savings for neighbors of saved homes
Alabama	14,480	\$287,273,000
Alaska	1,447	74,905,000
Arkansas	7,297	85,016,000
Arizona	63,415	6,732,666,000
California	385,039	121,033,183,000
Colorado	23,373	1,589,310,000
Connecticut	15,461	1,762,362,000
District of Columbia	2,726	2,822,811,000
Delaware	4,282	311,407,000
Florida	206,361	36,772,700,000
Georgia	59,197	1,247,655,000
Hawaii	7,293	3,655,706,000
Iowa	8,089	259,474,000
Idaho	7,342	238,286,000
Illinois	60,594	19,420,658,000
Indiana	27,960	589,237,000
Kansas	6,220	179,676,000
Kentucky	11,750	292,303,000
Louisiana	12,651	496,045,000
Massachusetts	37,330	9,264,833,000
Maryland	48,909	11,173,429,000
Maine	4,878	104,414,000
Michigan	52,884	2,581,196,000
Minnesota	25,001	1,515,320,000
Missouri	22,519	993,960,000
Mississippi	9,042	90,575,000
Montana	2,815	38,149,000
North Carolina	38,667	645,572,000
North Dakota	711	33,523,000
Nebraska	3,763	136,772,000
New Hampshire	5,812	169,863,000
New Jersey	44,585	15,149,105,000
New Mexico	6,411	375,826,000
Nevada	38,243	4,979,857,000
New York	70,808	37,296,477,000
Ohio	43,985	1,528,772,000
Oklahoma	9,322	210,114,000
Oregon	15,261	1,491,292,000
Pennsylvania	37,169	3,325,687,000
Puerto Rico	10,063	n/a
Rhode Island	6,665	1,482,129,000
South Carolina	17,011	298,754,000
South Dakota	1,504	30,513,000
Tennessee	25,208	564,744,000
Texas	82,302	2,798,084,000
Utah	10,988	685,958,000
Virginia	44,035	5,210,416,000
Vermont	1,466	15,138,000
Washington	27,176	3,397,336,000
Wisconsin	15,620	1,189,240,000
West Virginia	4,376	53,792,000
Wyoming	805	17,344,000
United States	1,690,308	304,697,753,000

Mr. DODD. I thank the Chair.

Again, I can't speak with absolute certainty. Maybe the numbers are a bit lower or higher. What if in my State it wasn't 15,000; what if it was 10,000? Frankly, 10,000 homes would be a lot, a lot of families in a lot of neighborhoods in an economy that would be vastly improved if 10,000 homes in my State could be saved from the terrible conclusion of foreclosure.

So we will consider this amendment in a couple of hours. We will vote up or down on it. Then we will go about our business on the housing bill that is before us. But as Senators think about how they are going to vote on this matter in a couple of hours, think about what it would mean tonight at 6 or 7 o'clock when another 10,000 of our fellow citizens find themselves in the serious condition of losing their homes.

What do you say to your children, your family, what it does to your neighborhood. Can we not take a chance and try an idea that colleagues have worked on for weeks now, not overnight—this is not a quickly drawn

amendment; it does not consider the concerns of the lenders in the country—to bring this together and give this an effort, as we did last summer with the HOPE for Homeowners and last spring as well.

I urge my colleagues to give this an opportunity to work. In my office, we get about 30 or 40 letters every day from constituents waiting to know whether they can keep their homes. I suspect I am not terribly different in that regard from my colleagues—or the e-mails that arrive in our office in Hartford on a daily basis. In many cases, the answer is—and we hear this over and over. Ed Mann has been with me 30 years. Ed Mann does not engage in hyperbole. He is a quiet, serious man. What he hears day after day in our office is: I have tried to reach my lender. I have called and called and I can't get hold of anyone. Can I get any help? That is repeated over and over.

I say this respectfully, but I believe in this proposal, which I think will cause lenders and borrowers to get together to try and work these matters out, the lender controls everything under the Durbin amendment. They have total control of the process. It is not in the hands of the borrower; it is in the hands of the lender and, obviously, the proposal of a bankruptcy judge being able to engage.

I met with my Federal judges—district court judges, appeals and bankruptcy court judges. To a person, every one of them said: You ought to pass this.

These are people who work on this every day. These are serious appointees in the Bush administration, as well as the Clinton administration. Some go back further, in fact, to the Reagan administration. To a person, all of them said: Get this done. This makes sense. These are bankruptcy judges. They are not frightened of the caseload. They are not afraid of trying to bring people together to save home ownership. Our bankruptcy judges believe this is right.

The civil rights groups of this country believe this is right. A long list of people worked on this. But our principal debt of gratitude goes to the Senator from Illinois who has been tirelessly championing this concept and idea. Senator SCHUMER has worked very hard as well on this issue.

My hope is, in the next couple of hours, we might surprise the country and actually do something to keep people in their homes. What a great message tonight that would be, instead of walking through the door saying: I think we lost our home, saying: There is a chance we can keep our home, keep our family together, weather this storm, and come out of it stronger and better because the Government is not going to just sit back and allow nature to take its course and subject me and my family and my neighborhood to the vagaries of the foreclosure process. People are on my side fighting for me. We can do that today in a united, bipartisan fashion by allowing this simple idea to have a chance to succeed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, Senator DURBIN's amendment would allow bankruptcy judges to modify home mortgages in bankruptcy court by lowering the principal and interest rate on the loan or extending the term of the loan. The concept in the trade is known as cram-down. It would apply, in his amendment, to all borrowers who are 60 days or more delinquent on payments for loans that originated before January 1, 2009, and would set the maximum value of loans that qualify at \$729,000. It is broader than the bill that was tabled in the Senate several months ago.

Senator DURBIN sincerely believes his amendment would help save homeowners who are at risk of losing their homes in foreclosure, and I respect that. But many experts believe the cram-down provision would have pernicious, unintended consequences on the mortgage market.

First, it would result in higher interest rates for all home mortgages, exactly what we do not want while we are trying to entice people back into the market. Interest rates on home loans are substantially lower now than other types of consumer loans because of the guarantees current law provides to lenders. If all else fails, the lender always has the right to take back the house for which it lent the money. If we eliminate this security for lenders and increase the risk inherent in making a home loan, then lenders will have to charge higher rates on interest for home loans to cover the risk. The net result of the amendment, in other words, will be higher interest rates for home loans and fewer Americans who will be able to afford to buy a house—not what we need to end the housing crisis.

While attempting to solve a specific problem for a particular group of people, we could end up exacerbating this situation for all the people who would want to refinance or to take out loans in the future.

As I said, experts agree and studies show cram-down will result in higher interest rates. That is why it is opposed by virtually all in the industry.

The Congressional Budget Office warned in January 2008 that cram-down could result in "higher mortgage interest rates" because lenders are forced to compensate for potential losses that will be levied upon them in bankruptcy court.

In hearings some years ago before the Senate Finance Committee, in 1999, Senator GRASSLEY asked Lawrence Summers, who now serves as President Obama's head of the National Economic Council, if "... debt discharged in bankruptcy results in higher prices for goods and services as businesses have to offset the losses?" Mr. Summers responded as follows:

The answer is—it's a complicated question, but certainly there's a strong tendency in

that direction and also towards higher interest rates for other borrowers who are going to pay back their debts.

In November 1986, Congress implemented a mortgage cram-down provision for family farmers under chapter 12 of the Bankruptcy Act—obviously, the same well-intended purpose here. According to a 1997 study, farmers faced a 25- to 100-basis point increase in the cost of farm real estate loans, as well as increased difficulty in obtaining financing as a result of the cram-down application. The current median value of a new home in the United States is \$206,000. A 25- to 100-basis point increase for the \$206,000 would increase the cost of the mortgage by over \$47,000.

We are talking about substantial impacts as a result of this well-meaning provision that would, in fact, over the entire market be very bad.

Proponents of the bill argue it should be allowed because, after all, bankruptcy law already allows a version of this for vacation homes. Big difference. What proponents do not mention is that to qualify for cram-down on a vacation home mortgage, the debtor is required to pay off the entire amount of the secured claim within the 5-year length of the chapter 13 plan. The Durbin amendment, of course, does not include the requirement that the debtor must pay off the security claim within 5 years. He does not purport to treat cram-down on primary homes the same way the Bankruptcy Code treats them on secondary homes.

There is a third point with respect to this particular amendment. As I said, it is different from what we tabled before. It is a much broader amendment. It is not the sort of narrow, targeted approach to the problem some people like to characterize it as.

Unlike prior proposals, this bill is not limited to the high-risk or subprime loans or other nontraditional loans but allows cram-down for all loans. Let me repeat that. Unlike what we dealt with before in prior proposals, this cram-down amendment is not limited to high-risk or subprime loans or other nontraditional loans. It would allow cram-down for all loans. The only limitation, as I said, is that the loan had to originate before January 1, 2009, and the maximum amount—not much of a limitation—is \$729,000, and the borrowers would have had to apply for relief under the Loan Modification Program. Other than that, there is no limitation, and as I said, it would apply to any kind of mortgage. This would, obviously, allow millions of borrowers to enter into bankruptcy and simply walk away from the debt owed on their homes.

I don't take this position lightly because my State is arguably the hardest, certainly one of the hardest hit by the foreclosure crisis. People in my State face this every day. I wish to help Arizonans stay in their homes. Every time I go home, which is virtually every weekend, I talk with peo-

ple who are, in one way or another, related to the problem because so much of the business in Arizona has to do with home building and development and construction. So many people have had problems with their mortgages. As I said, many are being foreclosed. All the others, the foreclosures, of course, represent a relatively small percentage of the total of 100 percent of loans. Most of the people I talked with are upset because the value of their homes has declined so much, among other things, because of their homes being foreclosed upon. They wonder: When is the market going to hit bottom; when am I going to be able to sell my home for something similar to the equity I have in it.

Values from assessors have shown that values have decreased by some 50 percent in amount. It is in our best interest to see this mortgage market bounce back, to see people be able to buy homes again and, frankly, to sell homes at somewhere near a realistic price related to their real value. This is a good time to enter into the home market if you have the money to do it because prices are so low and interests are so low. But the problem with this bill is it will make the interest rates higher and, therefore, will make it more difficult for people to afford to get into a home, the net result being the recovery will be extended far beyond what it otherwise would be under normal circumstances.

In my home State of Arizona, people are wondering: Will it be 6 months, 1 year, 18 months? I guarantee whatever that amount is, it will be longer if this bill passes. It will be longer because interest rates will increase, people will not be able to sell their homes and, therefore, we will continue to have the problem we currently have.

There are other programs available. I mentioned one. There is the HOPE NOW Program, the HOPE for Homeowners Program, and the President's new \$75 billion program that helps borrowers who are facing foreclosure to modify their loans and allow the so-called underwater borrowers to refinance into lower rate mortgages. These are the people whose home value is less than the amount owed on their mortgage.

There are programs available. All of us are talking to banks about working out loans with the people who face foreclosure. But a solution that may be well meaning but would have the unintended consequences this particular amendment has is not the answer. We should not simply grab onto something because it promises to provide some relief to some people, when the reality is that I think all the experts agree the interest rates would be increased, making it much more difficult for the 95 percent or so—I am not sure of the exact percentage—of the other people who would like to see this home mortgage crisis come to an end.

Bottom line: cram-down will not fix the recent downturn in the housing

market but only prolong the recovery by increasing interest rates. Instead of encouraging homeowners at risk of foreclosure to file for bankruptcy, the Federal Government should continue to encourage lenders to work with owners to modify loans where it is economically viable for homeowners to remain in their homes. Obviously, not all homeowners are going to be eligible for loan modification. But the answer is not to incentivize bankruptcy by making it as the only means to save one's home.

I hope that when it comes time to vote against the Durbin amendment, we will recognize we have already tabled an amendment which was much more narrowly written and that this is an amendment which deserves to be defeated.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Madam President, we face a grave economic crisis, and it is our responsibility, our duty as representatives of the American people, to give them every tool they need to weather this economic storm.

There is much we have already done to help. Working with President Obama, we cut taxes for middle-class families—because in times like this, every little bit helps. We gave an extra \$250 payment to seniors on Social Security and disabled veterans to help them make ends meet when their household budgets are stretched to the breaking point. Preserving jobs means preserving our families' livelihoods, so we are investing billions of dollars in new infrastructure to create and support jobs all across America.

Today, Madam President, we want to take on one piece of America's unfinished economic business. Many families in this country—too many—have found that making ends meet is impossible, and they are in the process of filing for bankruptcy. Four years ago, when Congress overhauled the Bankruptcy Code, our Republican colleagues suggested that those who file for bankruptcy had carelessly lived beyond their means and were trying to game the system—at best, irresponsible; at worst, engaged in fraud. But in the years since, we have seen that was not true.

Families don't enter bankruptcy casually to save a few dollars. Bankruptcy is a last resort for individuals and families on the brink of financial collapse. The vast majority of those who seek bankruptcy are struggling, working families. With the economy in its weakest condition in decades, bankruptcy filings are soaring. Tragically, the most common reason for bankruptcy has been health care costs—

compounding the heartbreak of illness or injury with the strain of financial distress—but a lost job or ruined pension can be just as devastating. And many families file for bankruptcy because the mortgages on their homes have gone through the roof and they simply can't afford them any longer.

Too many homeowners were coaxed into bad mortgages—with the promise that values would keep going up and up and up—in many cases, without even understanding the hazards built into the small print of the mortgages they assumed. Well, the bubble has burst, and now these homeowners are stuck with mortgages that are larger than the home itself is worth.

Ordinarily in a bankruptcy, judges can modify the terms of debts or obligations, including loans on vacation homes and on family farms. These modifications help prevent foreclosure and permit people to keep making payments on their reset loans. That is good because when a house is foreclosed, neighboring property values decline, tax collections decrease, and schools and communities suffer. Helping prevent foreclosures, as this amendment would do, will help rescue falling home prices and get the housing market back on track—and that will help all homeowners, not just those who are facing bankruptcy.

Under current law, Americans looking to bankruptcy to escape unbearable financial strains cannot modify the terms of the very contract most dear to any family facing bankruptcy—their principal residence, the place they call home, where they raise their children, where they know their neighbors, where they live their lives. They can face foreclosure, even homelessness. The neighborhood erodes, and a cascade of dire consequences ensues.

To remedy this, the distinguished Assistant Majority Leader, Senator DURBIN of Illinois, has offered an amendment that would temporarily, and with conditions, give primary residence mortgages the same treatment in bankruptcy as other types of secured debts. Like any secured creditor, the mortgage holder would be entitled to adequate protection of his or her property interest during the bankruptcy. The modification of the mortgage would be limited to a market rate and a term of no longer than 30 years.

Given the cost of foreclosures, which average \$60,000 per incidence—setting aside the harm to the family of losing their home, or the neighborhood of having another shuttered, plywood-covered building on the block—it would seem that this amendment to the code would ultimately benefit all of the parties to the mortgage. But on this question, the big banks seem to be inclined to suffering and deaf to common sense.

Despite requirements protecting banks that families give their lender 45 days' notice before filing for bankruptcy—that allow lenders to prevent forced modifications if they offer voluntary modifications as part of Presi-

dent Obama's Housing Affordability and Stability Plan; that sunsets the program at the end of 2012—the big banks are still opposed. They gorge on taxpayer funds and support, but they will not help these customers.

I would note this is not a problem with the small banks, the community banks that held their loans and work with their distressed customers in their community every day. This is a problem with the big banks that sold families' mortgages off in strips to investors far away, leaving the homeowner no one to talk to, no one who can make a decision about modifying the mortgage.

What is the homeowner supposed to do? Call an investor in Switzerland, in Japan? Ring up the hedge fund in New York that owns a strip of their mortgage and get them to all come together and agree on a workout? It is impossible.

When we allowed mortgage securitization, we created this hole, and we are obliged to fill it. Only a judge can cut through the nightmare of bureaucracy that a homeowner faces trying to sort through this mess. Securitized mortgages caused it, and there is only one practical way to clear it up, and that is the Durbin amendment.

I am very proud to have cosponsored this amendment, as well as the Helping Families Save their Homes in Bankruptcy Act, the bill on which this amendment is based. I thank my colleague from Illinois for his passionate and tireless work on this legislation. I share his belief that this is the most direct and effective way to mitigate the foreclosure crisis.

I also share Senator DURBIN's frustration that although he and others—Senator SCHUMER in particular—have worked tirelessly to negotiate in the interest of all parties, this powerful banking lobby has been greedy, stubborn, and unreasonable. It refuses to recognize the human problem that poor homeowners have when they have to try to reassemble a mortgage that got sold in strips around the world and try to get those people together to reach an agreement. It is asking ridiculous things of that family to expect them to handle that problem, and they have no other mechanism, except a court, which can settle it once, and quickly, for all.

I have been here only a short time, Madam President, but this is one of the most extreme examples I have seen of a special interest wielding its power for the special interest of a few against the general benefit of millions of homeowners and thousands of communities now being devastated by foreclosure.

Bear in mind that the big banks opposing this legislation can reset their own obligations in a receivership or bankruptcy, but what's fine for them is obviously too good for their long-suffering customers, who—uniquely—don't get the same rights for their home mortgage.

The scale of this is immense. Senator DURBIN's commonsense measure would help as many as 1.7 million American families stay in their homes and preserve \$300 billion—nearly one-third of a trillion dollars—in home equity for the neighboring homeowners whose home values get knocked down when a bank will not negotiate with an owner and comes in and forecloses, hammers up the plywood over the windows, lets the lawn grow out, and often lets the property be looted. In my home State of Rhode Island alone, 6,600 homes and over \$1.4 billion in home equity could be preserved.

Homeowners are up against an impossible situation. It was one that was created by the big banks and the investment world when they securitized these mortgages and spread them to the four winds. This is their only hope to redeem it, their only hope to have somebody sensible to talk to, and I urge my colleagues to support this amendment.

I thank the Chair, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mr. CARPER. Mr. President, I rise with some reluctance today to oppose the amendment before us. The amendment is being offered to what I think is a very good bill. The provisions of the underlying bill are worthy of our full support. The notion that we are going to expand the ability of FHA and Rural Housing to modify loans is something I certainly support and I believe others should. The idea in the underlying legislation is that we should expand access to the HOPE for Homeowners Program, we should provide a safe harbor for servicers who otherwise would modify a loan. We have a situation, as the President may know, where we tried to encourage the modification of loans to help people who are in a bind to avoid foreclosure. We find out that among the parties who have to agree to the loan modification are the servicers, the people to whom we send mortgage payments. They have not been anxious to participate in modifying the mortgages because, first, they get no financial incentive upfront for doing the work and, second, if they do the work to modify the mortgage, they end up being sued by the investors who own these mortgage-backed securities around the world. That is not much incentive and, as a result, servicers have not done the work they need to do to help modifications take place.

Mr. President, I ask unanimous consent that my time count against the Republican time. I understand it has been cleared with our Republican friends.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. In any event, the underlying legislation addresses in a very satisfactory way an approach so that servicers will be more likely to participate in mortgage modifications.

Finally, the underlying legislation creates more enforcement tools for FHA to use to go after bad actors, bad lenders. That is all good stuff and we ought to support it, and I certainly do.

I am sorry to say I cannot support in its current form the so-called bankruptcy cram-down legislation offered by our friend from Illinois. A year or so ago we visited this issue. We had a vote on the floor about whether to bring a provision similar to this to the floor for debate. I did not vote to bring it to the floor for debate at that time. I was not sure if the issue was ripe and I didn't know that we were ready to do it.

My view has changed. I think it is an appropriate time and place for us to negotiate—to debate the issue of cram-down. I think it is unfortunate that we cannot offer an amendment, a second-degree amendment or perfecting amendments to the provision that has come to the floor. I understand things have been worked out by others here, maybe in our leadership, to bring the amendment to the floor without the opportunity to perfect it further. I think that is unfortunate, but it is what it is.

About a month or two ago I hosted, back in Delaware, a forum that was designed to introduce to the people of my State the most recent initiatives launched by the Obama administration to encourage the modification of home mortgages, to help people who are in danger of becoming in default and facing foreclosure of their homes. The administration has given us a couple of very good proposals. I think our earlier HOPE for Homeowners proposal that we adopted when I served on the Banking Committee last year was a very good proposal, but the problem was we couldn't get the servicers to cooperate and be part of it. I think we figured that out in the underlying bill today.

When I hosted my forum back in Delaware earlier this year, some of the participants were fearful of losing their homes, some were approaching foreclosure. They wanted to learn more about foreclosure. We had housing counselors there. It was a helpful forum for a lot of people.

One of the things I learned there was from one of the people who participated, a woman who is a bankruptcy lawyer. She came up to me and she said: You know, we are having a hard time in some cases getting financial institutions, the lenders, to take seriously the opportunity to modify mortgages. She said: I think they would take that opportunity more seriously if they knew at the end of the day, if they were not serious, they would face in a bankruptcy court the possibility that a bankruptcy judge will come in, lower

interest rates, reduce principal and stretch out the time for repayment of these mortgages.

I thought she made a compelling case. I since then decided that maybe this is an issue we ought to bring to the floor. It does have value. This is the appropriate time. A lot of people are facing foreclosure, a lot of people are in foreclosures, and this could be a tool—not something that would be a first choice but maybe a last option. It could be the last option after whoever is the homeowner facing difficulty had gone through all the programs that are offered by the new administration and would then take advantage of whatever programs are offered by lenders—Countrywide and others.

The legislation before us today is an improvement over some earlier versions. There are a couple of problems I have with it. I want to mention those, if I could. One of the problems occurs when you have a situation where a person has asked a lender to modify a mortgage and the lender has agreed to do that and then in the next year or two the homeowner, who has actually gotten out of bankruptcy a better deal, turns around and sells their home at a profit. I believe the lender, having gone through the bankruptcy and the mark-down, if you will—that lender should be able to participate more fully than is envisioned in this underlying bill.

The House takes it a little differently. This amendment says the lender would appreciate, I think, maybe to the tune of 50 percent, 50–50 with respect to an appreciation in value following the bankruptcy. In the House they have a different approach. The first year the lender would get 90 percent of any appreciation, the second year 70 percent, third year 50 percent, and eventually phase out. I think that is a better approach.

I would like to have seen and encouraged that we consider more tightly constraining the period of years that would be covered; that is, from which mortgages would have been originated the number of years that might fall into this approach.

In the legislation before us, you can go all of the way back in time, whenever. There is no beginning date. The ending date is January of this year. And I think, whether it would happen to be a subprime mortgage, an Alt-A, almost any kind of mortgage would still be able to participate in a bankruptcy. That is a bit broad. At the very least, I would hope we would be able to come up with something that would say, we would end the period of eligibility maybe from 2002, 2003, to the end of 2007. That seems reasonable to me. We do not have that kind of constraint in this amendment.

If we could have fixed that provision, maybe moved the eligibility back from January 1 of this year to January 1 of a year ago, that would have certainly helped make it easier for me to support the amendment. The idea of giving the

lender a better opportunity to participate in appreciation of the home that later on comes out of bankruptcy, a person comes out of bankruptcy and sells their home for a profit, I think the lender ought to be able to participate more fully than is envisioned here in this amendment.

I think it is unfortunate that we do not have a chance to perfect it further. I do not know that we will see this issue again. My hope is what the administration—the programs the administration has launched will have great effect, a lot of people will take advantage of them, that the mortgage modifications of the individual companies, the individual lenders will be more effective and be better utilized.

I hope the fixes we are providing for the HOPE for Homeowners Program, addressing some of the problems I have mentioned, I hope that helps too. If it does not, and we realize later on that there still needs to be this threat of a bankruptcy cram down at the end of the day, then let's revisit this issue. But I hope those of us who have maybe somewhat different views will have them be debated on the floor, and have an opportunity, if we are not fully comfortable with what comes to the floor, have an opportunity to amend and hopefully perfect it and make it better.

I am going to have to reluctantly oppose the amendment. I appreciate our friends from the other side yielding time on this issue for me.

I yield back.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

EDUCATION POLICY

Mr. ALEXANDER. Mr. President, I wish to make a few remarks about education, a subject that is important to virtually all of us.

When figuring out what to do about education, my suggestion to those in my party is that Republicans should ask, "What would Lincoln do?"

During the first 16 months of his Presidency, Abraham Lincoln helped enact three of the most important and successful pieces of legislation in American history: the Homestead Act, the Morrill Acts that created the land-grant colleges and universities, and the Pacific Railroad Act.

What made these laws successful, according to Harvard Professor Bill Stuntz, in an April 6 article in *The Weekly Standard*, was that they "did not depend on the complex judgments made by members of congress or government regulators. [They] were meant to confer opportunities, not to solve problems . . . the necessary elbow grease was supplied by the private citizens whose prospects Lincoln improved."

These three laws helped American farmers create the world's most productive farmland and American universities produce the most educated workforce. The transcontinental railroad knitted together this sprawling Nation.

A later version of this same thinking produced the GI bill scholarships which followed veterans to the colleges of their choice at the end of World War II. Then came Pell grants and student loans which today follow two out of three students to the colleges of their choice.

Similarly \$31 billion of Federal research money is handed out each year to universities. Almost all of it is peer reviewed and competitively granted, and not parceled out by legislators and regulators. All of this might be called the Lincoln approach to Federal Government involvement in education. Conferring opportunities.

Now, compare it to the command-and-control Rooseveltian model best exemplified by our kindergarten through the 12th grade system of education. In that system, students do not choose—they are told—where to go to school. Government money goes directly to institutions, not to students. Government and unions write rules handcuffing teachers and principals and other student leaders. And virtually no teacher is paid more for teaching well.

There is yet another approach. No Federal involvement at all. Some believe that. Leave education to the States or communities.

I suppose that over the last 30 years I have embraced all three of these points of view. Some may call that unprincipled, but I prefer to align myself with former Senator Everett Dirksen, who once said: "I am a principled man, and flexibility is one of my principles."

During my second year as Governor in 1980, I asked President Reagan to support what I called a grand swap, give the States all of kindergarten through the 12th grade, and the Federal Government would take all of Medicaid.

The President liked that. I liked it. But it did not go very far.

In 1984, I helped make Tennessee the first State to pay teachers more for teaching well. I encouraged school choice and created centers and chairs of excellence at universities. Despite this aggressive State action, I concluded at the end of my 8 years as Governor that K-12 education depended entirely upon parents, teachers, school leaders, and community. So I traveled to all 132 school districts in Tennessee, creating Better Schools Task Forces, and challenging them to create better schools.

As Education Secretary, I proposed America 2000, again emphasizing community responsibility for education, higher standards for States, and support for what we called then "break the mold" charter schools, and more choices for parents of low-income children.

Later on, I said we can do without a Department of Education—the Department I used to head—meaning that I thought an agency handing out scholarships to K-12 students, as well as college students, plus some effective advocacy was all we needed at the Federal level.

As a Senator, I reluctantly embraced No Child Left Behind, because it forces reporting on children who are indeed left behind, but have introduced legislation to empower States to try to do that reporting in their own way.

Putting it all together, I may not have been quite as inconsistent as I have accused myself of being.

No. 1, I believe the Federal Government should be involved in education, but I am for the Lincoln empowering model as opposed to the Rooseveltian command-and-control model.

No. 2, I believe that 95 percent of making K-12 education better depends on parents and teachers and school leaders. And, finally, while I believe it is virtually impossible for regulators and politicians in Washington to make schools better, I believe it is sometimes possible for Washington to help parents, teachers, school leaders, and communities make schools better.

So following that Lincolnian set of principles—conferring opportunities instead of making decisions—what exactly should the Federal Government do to empower parents and help them be better parents?

One, a Pell grant for kids. Give every middle- and low-income child \$500 to spend after school at any State-approved education program. This would help fund music and art lessons, English lessons, other catchup and get-ahead lessons. It would pour billions into poorer school districts, programs encouraging public schools in those districts to get busy and attract students by offering the afterschool programs themselves.

A second thing would be a Federal tax system favoring parents with children. We had this during the 1950s in America. President George W. Bush did more to support this idea than most realize.

Next, perinatal care. Make sure that pregnant mothers receive care and find a medical home, a team of medical professionals that is responsible for coordinating all of the new baby's health care needs from before the pregnancy until 6 weeks after. That would be the real Head Start.

Nurses in homes. We could encourage nurses to visit homes to make sure every newly born child has a medical home. Remember, now, I am taking about what could the Federal Government be doing to help parents be better parents.

Home schooling. Our policy should be never to hinder home schooling, and to look for ways to help. Why should we punish parents who are doing their job well?

Professor Coleman at the University of Chicago used to say: School is for

the purpose of helping parents do what the parents do not do as well.

We could help adults learn English. There are lines of new Americans outside federally funded programs in Tennessee to help adults learn English. Senator KENNEDY has told me the same is true in Massachusetts. Encouraging our common language is a Federal role, and if parents speak English better, the child is more likely to speak English better.

Finally in this list of ideas: worksite day care. With so many parents working outside the home, there is less time for the child. One solution is worksite day care near the place where the parent works. Take the child to work. This is usually a private sector solution, but as assistance for low-income parents could make sense.

To help teachers and school leaders be better, what could the Federal Government do? One thing would be to help fund higher standards and data collection. Those should be set by States or groups of States, not by those of us in Congress. But they should be set so teachers, parents, and students know what to expect.

Probably nothing is more important than paying good teachers more for teaching well. I especially admire the work the new Secretary of Education has done in this area in Chicago. I know the new Senator from Colorado and the Senator from Tennessee, Mr. CORKER, in their hometowns have done this.

Every child benefits from exceptional teaching. Now that we know how to relate student achievement to the skills of the teacher or the groups of teachers, we should pay teachers for their superior skills. That means expanding the Teacher's Incentive Fund, which already exists, to help local school districts reward outstanding teaching in many different ways.

As the late Albert Shanker, president of the large American Federation for Teachers, used to say, "If you can have master plumbers, why not master teachers?"

We should encourage charter schools. That helps teachers because it liberates the teachers and school leaders to use their own good judgment to help the children assigned to them. I am encouraged that the new Secretary of Education has encouraged charter schools.

Teach for America helps to supply new raw talent to the classroom, and I think, even more important, forms an alumni corps of support for excellence in the public schools, once those young teachers go on to whatever else they plan to do.

Teachers' colleges. They need to be improved. One way to do it would be to award peer-reviewed, competitive research grants on the agendas most of them will not touch: how to give parents more choices, how to reward outstanding teaching, how to make charter schools successful, and how to help newly arrived children learn English.

UTeach is another idea formed at the University of Texas-Austin. The America COMPETES Act that we passed in a bipartisan way in 2007 carries that nationally. It funds scholarships at universities where good students in math and science will switch to teaching.

Summer academies. Senators REID and KENNEDY, a whole group of us, have helped to create summer academies for outstanding teachers of U.S. history, as well as the sciences. These are inexpensive and enriching and they do not intrude very much into State and local responsibility.

School leaders. The biggest bang for the buck that we can do from here, or that States could do, or that school districts could do, is training school leaders. Generally, our role could be to expand the Teacher Incentive Fund and the New Leaders for New Schools Program.

Our higher education system is molded upon the Lincolnian principles. It is also the best in the world. Our K-12 system is smothered by commands and controls from Government and the unions. It is a source of constant concern. Republicans should create proposals and policies that confer opportunities for parents, teachers, students, school leaders, and researchers, and stay away from programs that create command-and-control orders from politicians and regulators.

That is a lesson from our founder, Abraham Lincoln.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Mr. President, I ask unanimous consent to speak as in morning business and that the time not be charged to the Durbin amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMEMBERING THE FALL OF SOUTH VIETNAM

Mr. WEBB. Mr. President, I have a resolution I have left at the desk which would honor the Vietnamese refugees who came to this country after the fall of South Vietnam. I would like to take a few minutes to discuss the importance of this day, April 30.

Today is a day that, for Vietnamese around the world, is as significant as the distinctions that are often made in other cultures between B.C. and A.D. Thirty-four years ago, on April 30, 1975, the Communist forces from North Vietnam finished their conquest of the south, and the struggling, war-torn country of South Vietnam ceased to exist. Many who fought on the Communist side and others who supported them believe that the motivation for pursuing this war was the unification of the country and independence from outside influence, and in many ways the position that they took, and the loss of 1.4 million Communist soldiers on the battlefield in pursuit of that position, is understandable. But it is just as understandable to recognize and honor the aspirations of the overwhelming majority of the people of

South Vietnam who fought long and hard at a cost of 245,000 battlefield deaths for a government that, like our own here in the United States, allows true political and individual freedom.

Those aspirations fell to the wayside as North Vietnamese tanks entered Saigon in blatant violation of the 1973 Paris Peace accord and instituted a harsh, Stalinist system of government that was marked at the outset by cruel recriminations toward those who had resisted its takeover. And thus, for millions of Vietnamese around the world, April 30 is a reminder of the loss of everything, including their homes, their way of life, and their hopes for a prosperous and open future for the country that they loved.

Americans in general tend to avoid or ignore this day and the significance it has not only on the Vietnamese but also on our own history. But it is important for us to look back on that day and on the war itself, not in anger but in fairness, in a way that gives credit where credit is due. And it is also important, for all of the reasons that led many of us to support that war endeavor, that we commit ourselves to working together to build the right kind of dialogue with the present Government of Vietnam in order to help bring a better future for the Vietnamese people and a more stable strategic environment in east Asia as a whole.

Frankly, I believe this war still divides Americans in a way that they still feel but no longer openly discuss. I am not sure we can even agree on the facts, much less the rightness or wrongness of our policies, that caused us to commit our military to that battlefield, with the eventual loss of 58,000 dead and another 300,000 wounded. Was it right to go into Vietnam? Was it important? If you ask those in academia, the predictable answer, growing ever more predictable as the years cause us to summarize the war ever more briefly, is that it was a mistake. And yet here is a piece of data that should still cause all of us to think again. In August, 1972, 8 years after the Gulf of Tonkin incident that brought us full-bore into Vietnam, even at a time when the Nation had grown weary of bad strategies, after tens of thousands of combat deaths, and years of massive antiwar protests, a Harris Survey showed that 72 percent of Americans still believed that it was important that South Vietnam not fall into the hands of the Communists, with only 11 percent disagreeing.

Over the years, we have lost the reality of those concerns. Too often in today's discussions that examine the Vietnam war, we are overwhelmed by mythology. I hear it said quite often that this was a war between the United States and Vietnam. Nothing could be further from the truth, and nothing could be more offensive to the millions upon millions of Vietnamese who supported the South Vietnamese Government and its long-term goal of a stable democracy. Our attempt to help that

government was no different than the manner in which we assisted South Korea when it was attacked after being divided from North Korea, or the motivation that caused us to support West Germany when the demarcation line at the end of World War II divided Germany between the Communist east and the free society in the West. We were not successful in that endeavor in Vietnam for a number of reasons. But it would be wrong to assume that this was an action by our country against the country of Vietnam, or that it was motivated by lesser ideals.

We hear a lot of dismissive talk about the domino theory and the supposedly unjustified warnings about what was going on in the rest of the region with respect to efforts that were backed by the Soviet Union and Communist China in the runup to our involvement. But these were valid concerns at the time. The region had seen a great deal of turmoil during and after World War II. Most of the European colonial powers had receded throughout Southeast Asia, largely because of the enormous costs of that war, leaving poverty, war damage and unstable governments behind. Japan had withdrawn from the territories it had invaded and occupied. Governmental systems throughout the region were in transition, many in chaos. The Communists had moved into power in China. Within a year North Korea invaded South Korea, and were joined on the battlefield by the Chinese. Indonesia endured an attempted coup, sponsored by the Chinese.

In fact, Lee Kuan Yew, the brilliant leader who created modern Singapore, has said many times that the American effort in Vietnam was a key contribution in slowing down communism's advance throughout the region, and allowing the other countries in the region to stabilize and prosper. The point, simply made, is that there was a great deal of strategic justification for what we attempted to do.

This brings us to April 1975. A North Vietnamese offensive had begun in the aftermath of a vote in this Congress to cut off supplemental funding to the Government of South Vietnam. This was combined with a massive refurbishment of the North Vietnamese army, with the assistance of China and the Soviet Union, that allowed the offensive to kick off at a time when our South Vietnamese allies were attempting to reorganize their positions in order to adapt to the reality that they were going to get markedly less funding in terms of vital supplies such as ammunition and parts for their American-made weapon systems, as well as medical supplies.

The events following the fall of Saigon on April 30, 1975, have never really been given the proper attention, probably because proper attention would embarrass so many people who had

downplayed the dangers of a Communist takeover. A gruesome holocaust took place in Cambodia, the likes of which had not been seen since World War II. Two million Vietnamese fled their country—usually by boat—with untold thousands losing their lives in the process, and with hundreds of thousands of others following in later years. This was the first such Diaspora in Vietnam's long and frequently tragic history. Inside Vietnam a million of the South's best young leaders were sent to reeducation camps, where 240,000 stayed for longer than four years. More than 50,000 perished while imprisoned, and others remained captives for as long as 18 years. An apartheid system was put into place that punished those who had been loyal to the U.S., as well as their families, in matters of education, employment and housing. The Soviet Union made Vietnam a client state until its own demise, pumping billions of dollars into the country and keeping extensive naval and air bases at Cam Ranh Bay.

As a consequence of that bitter day in April, 1975 there are now more than 2 million Americans of Vietnamese descent. We are better off as a nation for their contributions to our society, at every level. It was not always easy for these refugees when they arrived during the late 1970s, to a country that had been so torn apart by the war itself. But they won the rest of us over with their perseverance, their reverence for education, and their dedication to their families. Our gain, at least in the short term, was Vietnam's loss.

It is important that Americans understand this journey, because those who lived it deserve a fair place at the table as we continue to work toward better relations in the Vietnam of today. Not to undertake a new round of recriminations; not to relive the bitterness of the past; but to build a proper bridge between our country and Vietnam, for the good of both countries, for the health East Asia, and for the benefit of all the people inside today's Vietnam.

With respect to the region, Vietnam remains one of the most important countries in terms of the manner in which the United States should be preserving all of its legitimate interests on the East Asian mainland. With the steady accretion of Chinese influence to the north, the expansion of India to the southwest, and the evolution of Muslim influence in Southeast Asia in countries such as Indonesia, Malaysia and the southern reaches of the Philippines, Vietnam, along with Thailand and Singapore, are absolutely vital to our posture as an Asian nation.

With respect to the Hanoi Government, with which I have had a long and not always pleasant relationship since 1991 when I first returned to Vietnam, I have a great appreciation for the very significant strides they have made since those early days. The relationships that are now evolving between

Vietnam and the United States are healthy. In the long term, I believe they are going to be successful. And even though I remain proud of my Marine Corps service in that war so many years ago, I welcome them. When I first returned to Vietnam in 1991 I went to Easter Mass at the Hanoi cathedral. There were perhaps 20 people in the church, all of them elderly. Last Christmas I attended Christmas Mass and there were at least 2,000 people in the church, overflowing into the courtyard. People can argue around the edges—we can have our political debates—but this is progress. We need to reward those strides with reciprocal behavior, even if we remain at odds on other issues. There is a lot to be proud of in terms of the transformations that have been going on in Vietnam. Vietnam is growing. It is growing economically. It is growing politically. It is reaching out to the rest of the world. It is acting responsibly in the international arena. We have much to do with that success, and we have much work to do. We have much work to do in terms of encouraging more openness and greater political freedom. But we are on a pathway where, with the right kind of continued dialogue, I believe all of that is going to occur.

And so I would like to reemphasize that the best legacy for those of us who care deeply about this issue, and who remember all the tragedies of the war, will be for us to see Vietnam, the Vietnam of today, as a strategic and commercial partner and also as a vibrant, open society whose government reflects the strength of the culture itself, a strength that has been demonstrated over and over again by the Vietnamese who have come to this country and who, I am proud to say, are now Americans.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent to speak for up to 15 minutes on the Republican time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I strongly support Senator DURBIN's amendment. It will facilitate and promote negotiation and restructuring of mortgage debt on primary residences, which is a sensible and preferable alternative to foreclosure and all the negative consequences that process involves. I cosponsored earlier versions of this measure introduced in the last Congress by Senator DURBIN as well as this one. I am proud to cosponsor the current amendment.

Including this provision in the housing bill is absolutely critical to helping

an estimated 1.7 million homeowners facing foreclosure to obtain modifications of their loans so they can return to making payments and stay in their homes. This, in turn, would contribute powerfully to stabilizing the housing market and the entire financial sector, allowing our economy to recover.

For nearly 2 years now we have seen a devastating wave of home mortgage foreclosures all across America. Foreclosure exacts a painful toll on borrowers who cannot keep up with their payments. Let's not avoid the harsh realities: foreclosure means families—many oftentimes with young children—are forced out of their homes. It is a wrenching and emotionally devastating process.

But we also need to appreciate that the broader economic consequences of all of these foreclosures are overwhelmingly negative. The lender still loses money. The value of houses in the surrounding neighborhoods declines further. So-called toxic assets held by financial institutions and investors become even more toxic. The financial system and the broader economy suffer further damage. This is totally counterproductive, as we have seen vividly over the last year. It simply makes no sense to continue down this failed path of massive home mortgage foreclosures.

The Durbin amendment offers a far more promising and productive approach. Keep in mind that "foreclosure" is a legal shorthand for a process that cuts off or extinguishes the ability of a borrower to pay debt and remain in the home. It literally, as the word is used, forecloses any other options. The Durbin amendment, by contrast, encourages debtors and creditors to seek and negotiate sensible, workable, and economically feasible options or alternatives. What Senator DURBIN is proposing very faithfully applies the hard lessons learned as borrowers, lenders, and our Nation worked their way out of the agricultural credit crisis of the 1980s.

There are a lot of similarities between the farm crisis in the 1980s and the home mortgage and foreclosure crisis of today. In both instances, the value of the underlying assets—farmland in one case, houses in another—rose very steeply. In both cases, debts secured by those underlying assets rose very rapidly also. In both situations income available to pay off debt fell—in the farm crisis because of lower commodity prices, in the housing crisis because of unemployment and lower wages and salaries. In both instances the asset bubble burst. It was not only a matter of being unable to make payments; the asset values could no longer support the loan. With many farms, as now with many houses, the borrower owes much more than the real estate is mortgaged for.

So for a while in the farm crisis, both borrowers and lenders tried to ignore and deny what was totally an unsustainable situation. Eventually,

some lenders relented and started working out new loan terms that would reschedule payments, modify interest rates, and, in some cases, write down the debt a little bit. However, not all lenders would engage in that type of negotiation. For whatever reason, they did not want to recognize the economic reality: that not all of the debt could be repaid and that there was not enough collateral value left to pay off the loan, even if they went through foreclosure.

So what happened is, Congress had to step in and bring a dose of reality to resolving the farm debt. It did so by enacting chapter 12 to the Bankruptcy Code in 1986. I was here, a member of the Agriculture Committee at that time, working very diligently in trying to get through this farm credit crisis. But when we did that, Congress gave to family farms and ranches the debt restructuring remedy that had been available to other business enterprises. Chapter 12 bankruptcy permits the courts—permits the court—to modify loans to family farmers, including those secured by a principal residence.

Professor Neil Harl of Iowa State University, one of the most respected agricultural economists in the Nation, conducted authoritative studies of the impacts of chapter 12 bankruptcy. One of the more significant findings by Professor Harl was that some 84 percent of the original filers for chapter 12 bankruptcy were still farming or owning agricultural land 7 years later. So this was an astonishingly successful outcome, exceeding the expectations of even the most enthusiastic supporters of chapter 12 bankruptcy legislation. Professor Harl also concluded that chapter 12 provisions did not—did not—have a significant effect on interest rates. Again, this was contrary to the dire predictions by many lenders at that time—the same dire predictions that we are hearing from lenders today.

As Professor Harl pointed out, both in the 1980s during the agricultural sector, and in the 2007–2008 housing sector, the losses have already occurred because the borrowers who received relief would otherwise have been unable to repay their loan. So, again, we heard all of these dire predictions of why we can't let the bankruptcy court come in and do something other than foreclosure—to modify, to write down the debt a little bit, stretch out the payment times. What we did for many farmers at that time—they may have had high-interest loans for 7 years, 10 years. What we did, the courts came in, reduced the interest rates and strung out the payments for 20 years, 30 years. That is why so many years later farmers were still farming because they knew the underlying asset was still valuable. It was still productive. They just had to get through a bad rough spot. So there are a lot of farmers today still very much engaged in agriculture or ranching. That would not be so today had we not enacted that chapter 12 for agriculture in the mid-1980s.

So the provisions of the Durbin amendment give powerful incentives to financial institutions to work constructively with those in financial difficulty. Indeed, by giving the bankruptcy judge authority to force modification to mortgages on primary residences, as is the case with other assets, there is a real incentive to come to terms. I have never understood why a bankruptcy judge can force modifications to other assets but not on the primary residence. Well, we had the same situation in the 1980s, and we extended it to farms and, as I said, as Professor Harl showed, the rest is history. It succeeded beyond anyone's wildest expectations.

By giving this authority, again, to the bankruptcy judges, as I said, there is an incentive for both the financial institution and the borrower to come to some terms. This is very helpful for a person in difficulty, and it is very often in the interests of the owner of the mortgage, though it admittedly is not always in the interests of the mortgage servicer. We want to give relief to homeowners facing foreclosure not just for their benefit but for our benefit—the benefit of our economy.

So I urge my colleagues to support the Durbin amendment. Again, as we saw during the chapter 12 bankruptcy proceedings during the farm crisis in the 1980s, these provisions will allow many people to retain their homes and to weather this terrible economic downturn. Generally speaking, lenders will not lose any money they would not already stand to lose if they were to force foreclosure.

As I said, I believe there is a very correct and almost similar parallel to what we did in the 1980s with farms. People who are in financial difficulty today because of the downturn in the economy are going to be productive workers in the future. Why force them out of their homes when a modification such as stretching out payments, reduction of interest rates, could keep them in their homes, keep up the value of the surrounding property around them so they don't get in this downward spiral in their communities. To me, this makes eminently good sense.

Also, the positive consequences for our economy would be profound. An estimated 1.7 million families would be able to avoid foreclosure and keep their homes. The housing crisis, as I said, would receive much needed support. The housing market would be able to stabilize. All of this would be a much needed tonic for our economy.

So I commend Senator DURBIN for always being on the leading edge, as he has been in the past. This is an amendment that I don't know why it isn't just accepted. It should be adopted overwhelmingly. As I said, we have a precedent for it. We know what happened in the past, and we know the same thing applies today.

So I urge my colleagues to wholeheartedly support the Durbin amendment for individual homeowners, for

communities, but for our overall economy.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to thank my colleague from Iowa for his kind and supportive statement about this pending amendment.

For the information of my colleagues, I have spoken to the Republican cloakroom. I believe this has been cleared, and if it hasn't, I will subject it to further modification. We have some 30 minutes remaining in the debate on this amendment that is pending, and it is to be evenly divided, 15 minutes to each side. So for the information of my colleagues, we expect the vote to be in the neighborhood, in the range of 2:45, if they want to make their plans accordingly, unless the Republican side yields back the 15 minutes they have remaining, which is their right, but they are certainly not compelled to do it. So I am not asking for a consent. I hope I am just explaining what the current consent order will lead us to.

Mr. President, I wish to show America what this debate is all about. It is about this: This picture was taken on Capitol Hill. Two adjoining homes on Capitol Hill, No. 822 on Capitol Hill, a neatly kept home—flower box, some work with some shrubbery here, nicely painted, obviously a lot of pride of ownership. Look next door. What do we find? A foreclosed property on Capitol Hill. This person is making his mortgage payment every month faithfully. This person is foreclosed on. The property is in the hands of a bank. This property is deteriorating. As it deteriorates, so does the value of the good-looking home right next door.

That is not an unusual story. It is a story that will be repeated 8 million times over the next several years because that is what Moody's estimates will be the number of mortgages foreclosed upon in America if we do nothing—8 million mortgage foreclosures. Out of all the home mortgages in America, it means that one out of six will be foreclosed upon.

This is an American tragedy coming to your neighborhood, coming to your home, coming to what may be the most important asset you have on Earth. It does not have to happen. We can do things now to make a difference. We have waited patiently for the banking industry to show leadership on this issue for years. They have failed. There has been one excuse after another why they cannot step in and help people renegotiate their mortgages.

Foreclosure is not a day at the beach for a bank. It costs them up to \$50,000, sometimes more. They end up owning property, which is not what most bankers go to business school to learn how to do, and the property deteriorates, the value deteriorates, and they are stuck with it.

We have said to them: Let's find a way out of this that is reasonable.

Let's give to those facing mortgage foreclosure a last chance in bankruptcy court to have the judge try to adjust the value of the principal of the mortgage no lower than the fair market value of the home—that is the best that any bank could ever hope for, if they could ever sell this property—no lower than the fair market value of the home and an interest rate that is competitive with market rates. If the person in bankruptcy has enough income to make the payment, give them that second chance. The banks say: No, never, even though that kind of a power in bankruptcy court is available for every other piece of real estate you own—the farms Senator HARKIN of Iowa spoke to, ranches, vacation condos. It does not apply to a person's home. Why? Why wouldn't we apply it to a person's home? That is what the Durbin amendment does.

We said to our friends in the banking community: We are going to give you the last word, and here is what we are going to tell you: Anybody who wants to go to bankruptcy court to have their mortgage rewritten by the bankruptcy court first has to go back to the bank where they have their mortgage at least 45 days in advance of filing bankruptcy and put all of their documentation on the table as to their income and their net worth. If the bank then makes them an offer of a mortgage that has a mortgage-to-income ratio of 31 percent, which is the standard we are using now, if the bank makes that offer, whether the borrower takes it or not, the bank is protected, the person can't go to bankruptcy court. The bank has the last word in terms of whether anyone can even raise this issue in bankruptcy.

I have been working on this for 2 years. By Senate standards, that is a heartbeat. In this place, you better get ready to hunker down and fight for months and years at a time if it is an important issue, and I still am. But for 2 years, we have been working with the banks trying to come up with a reasonable way to avoid this tragedy in neighborhoods across America. They are the ones who came up with the 45 days before filing for bankruptcy. They wanted us to restrict it so it is not in the future, it only applies to existing mortgages. We said OK. They wanted to put a limitation on the value of the home, \$729,000; that is the most you can consider to refinance. We said OK. They wanted to make sure a person had been delinquent at least 60 days before they could even consider bankruptcy. We said OK. We did all of these things because the banking industry said that way people will not be doing irresponsible things and taking advantage. We did them all. We made all these concessions. I do not agree with some of them, but that is the nature of compromise, that is the nature of the legislative process.

What happened at the end of the day after we made all these concessions? I will tell you what happened. The bank-

ers got up and walked out. That is right. The American Banking Association, the community bankers, the major banks, such as JPMorgan Chase, Wells Fargo, Bank of America, and the credit unions walked out. They want nothing. They want no change. Only Citigroup said: We will stick with you; we think it is reasonable. They are the only ones.

If you ask them why they are opposing this effort to try to renegotiate a mortgage to keep a family in their home to avoid this mess, they say: Senator, you don't understand. It is about the sanctity of the mortgage contract.

Really? We know how some of these mortgages came to be. They came to be as a result of at least misleading the borrowers, if not outright fraud.

They used to call these mortgages no-doc mortgages. Do you know what that means? It means they were giving mortgages to people without any proof of income or net worth. If you dialed that 800 number on the television screen, a fellow would show up, set up your closing in 48 hours, and get it done. Just keep signing those papers, incidentally, until you get to the bottom of the pile and everything is taken care of. Six months, 1 year, 2 years later, that mortgage exploded in the faces of these homeowners.

Then there were others. They didn't get suckered into these subprime mortgages; they were folks just making their payments, everything was fine. Then the bottom fell out of the real estate market.

What is your home worth today? I can tell you what it is in Springfield, IL, my home I have been in for 30 years. The value of my home is down at least 20 percent. Did I miss a mortgage payment? No, but it is the state of the real estate market. Lucky for me and my wife, we paid down enough on our mortgage so it is no big problem. For some people, they went underwater. The value of the home is lower than the principal of the mortgage they were paying off. So their credit rating disintegrated as a result of that. The value of the home here, well kept and well painted, goes down because of a foreclosed home next door, and the credit rating of this homeowner deteriorates and disintegrates to the point where they cannot refinance their home. That is the reality. That is the catch-22.

The banks are arguing the sanctity of the mortgage contract. I have news for them. The bankruptcy court is all about looking at contracts. That is what they do anyway. When we reformed the Bankruptcy Code a few years ago, I didn't hear any argument about the sanctity of the contract when we changed the rules of the game. In that case, the financial institutions liked changing the rules, liked changing the contract. Now they are for the sanctity of the contract.

One other argument I think takes the cake: Senator, you don't understand the moral hazard here. People

have to be held responsible for their wrongdoing. If you make a mistake, darn it, you have to pay the price. That is what America is all about.

Really, Mr. Banker on Wall Street, that is what America is all about? What price did Wall Street pay for their miserable decisions creating rotten portfolios, destroying the credit of America and its businesses? Oh, they paid a pretty heavy price—hundreds of billions of dollars of taxpayers' money sent to them to bail them out, to put them back in business, even to fund executive bonuses for those guilty of mismanagement. Moral hazard? How can they argue that with a straight face? They do.

Let me show you what this means in some of the States across the United States if the Durbin amendment would pass.

Take a look at the State of Florida. This State is really hard hit; 206,000 homes would be saved from foreclosure with the Durbin amendment—206,000 in the State of Florida. For the rest of the homeowners in the State, \$36 billion in value in their homes would be protected because we saved these homes.

Take a look at the State of Ohio. Almost 44,000 homes will be saved by the Durbin amendment; \$1.5 billion in real estate values saved for the people who live next door and on the same block.

The State of Pennsylvania: 37,000 homes saved; \$3.3 billion in real estate value protected.

The State of Maine, a small State but almost 5,000 homeowners would not face foreclosure because of the Durbin amendment, and \$104 million in value would be protected for homeowners across the State of Maine.

In the State of Missouri, 22,000 homes saved; \$993 million in value.

I want to show a chart from the city of Chicago, which I am proud to represent. It looks as if it has the measles, doesn't it? This chart shows the foreclosures in 2008, the filings in the city of Chicago. Have you ever flown into Midway Airport and looked down at the little houses, the little blond, brick bungalows? They have been around at least since World War II. Good, hard-working families are in those homes, starter homes for some, above-ground pools in the backyard, nice little flowers planted in the front yard, no trash out in the streets. These people are, by and large, ethnic folks, immigrant folks. They value that home. It is the best thing they have going for them. In that ZIP Code right around Midway Airport, there is not a single block in that ZIP Code that does not have a foreclosed home. Not one. And you tell me what that means to the folks living next door. I know what it means. It means that the value of their home just went down, and if the foreclosed home is not watched carefully, even worse things can occur.

Here is what it comes down to. This is our chance to stand up for the folks across America who send us here to be their voice. They are not lucky enough

to have the American Bankers Association as their lobby. They are not lucky enough to have the community bankers as their lobby. They are not lucky enough to have the credit unions as their lobby. What we are talking about here are people who do not have any paid lobbyists. What they are counting on is Senators in this Chamber who will stand up for them.

The bankers don't want this. They hate the Durbin amendment like the devil hates holy water. That was an old saying, which I particularly like, from Dale Bumpers, who served from the State of Arkansas. They hate this amendment so much, so they negotiated for weeks and at the end of it pulled the plug—we are going to walk away. We are going to tell all of our friends, all of our loyal friends to vote no.

I hope the homeowners across America have more friends here than the American Bankers Association. We are going to get a test vote in a few minutes to find out. I need 60 votes to win. That is not easy, I know it. I don't know how many, if any, votes will come from the other side of the aisle. I have spoken to a few over there, even some on this side of the aisle, one who has spoken out against this proposal, and that is his right to do. To me, at the end of the day, this is a real test as to where we are going in this country.

Next up after mortgages is credit cards. Next week, the bankers can come in and see how much might and power they have in the Senate when it comes to credit card reform.

The question we are going to face is whether this Senate is going to listen to the families facing foreclosure, the families facing job loss and bills they cannot pay or whether they are going to listen to the American Bankers Association, which has folded its arms and walked out of the room. I hope we have the courage to stand up to them. I hope this is the beginning of a new day in the Senate, a new dialog in the Senate that says to bankers across America: Your business-as-usual has put us in a terrible mess, and we are not going to allow that to continue. We want America to be strong, but if it is going to be strong, you should be respectful, Mr. Banker, of the people who live in the communities where your banks are located. You should be respectful of those hard-working families who are doing their best to make ends meet in the toughest economic recession they have ever seen. You should be respectful of the people you want to sign up for checking and savings accounts and make sure they have decent neighborhoods to live in. Show a little bit of loyalty to this great Nation instead of just to your bottom line when it comes to profitability. Take a little bit of consideration of what it takes to make America strong because when this country is strong, when families can stay in their homes, take pride in their homes, and our communities are better, guess what. You are going to do

better as a banker. That is what will happen at the end of the day.

When I offered this amendment last year, they said: Not a big problem; there are only 2 million foreclosures coming up. They were wrong. It turned out to be 8 million. And if the bankers prevail today and we cannot get something through conference committee to deal with this issue, I will be back. I am not going to quit on this issue. Sadly, the next time I get up to speak, whenever that might be, if we are not successful today, it may not be 8 million, it may be 10 million or 12 million.

At some point, the Senators in this Chamber will decide that the bankers should not write the agenda for the Senate. At some point, the people in this Chamber will decide that the people we represent are not the folks working in the big banks but the folks struggling to make a living and struggling to keep a decent home. That is the test.

I hope my colleagues will join me in adopting the Durbin amendment.

Mr. President, I ask unanimous consent that at 2:45 p.m. today, the Senate proceed to vote in relation to Durbin amendment No. 1014 and that any provisions of a previous order relating to this amendment remain in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, 1.7 million is the number of families that we will either help stay in their homes or allow to lose their homes and be thrown on to the street.

Tomorrow the Senate will have the opportunity to vote for an amendment to the Helping Families Save Their Homes Act that would enable 1.7 million families to avoid foreclosure.

My amendment would make a small change to the bankruptcy code to give these families a little bit of leverage as they work with their lenders to create a modified mortgage that they can afford.

When we can avoid foreclosures and families can stay in their homes, everyone wins—the families, their neighbors, their lenders, and the government. We can save 1.7 million homes with one vote.

I have come to the floor each day this week to talk about the scale of the problem and what we believe we should do about it, in very general terms.

Now I would like to get specific.

Let me be clear: this is a very different amendment to the bankruptcy code than my colleagues have seen before.

This amendment would integrate assistance in bankruptcy to the two primary foreclosure prevention efforts already underway: the Obama administration's Homeowner Assistance and Stability Plan and the congressionally created Hope for Homeowners refinancing program which the other title of this bill will greatly improve.

Our objective is to keep as many families in their homes as we can. Ideally none of these families would

have to go through the painful process of a chapter 13 bankruptcy.

So this amendment would help only troubled homeowners who could not find other assistance outside of bankruptcy first.

Let me put it another way: mortgage servicers would be given full veto power over which of their borrowers could go to bankruptcy—they would be given the keys to the courthouse door.

All a servicer would have to do to block a borrower from going to bankruptcy for a mortgage modification would be to offer the borrower a modification that conforms to the standards of the Homeowner Affordability and Stability Plan or Hope for Homeowners—regardless of whether the borrower accepts the offer or not.

For banks and credit unions that aggressively offer modifications to borrowers who are in trouble, the total number of their borrowers who will be eligible for bankruptcy assistance will be exactly zero.

Specifically if a servicer offers a loan modification that reduces the borrower's mortgage debt-to-income ratio to 31 percent—the same as the Housing Affordability and Stability Plan—or if a servicer offers Hope for Homeowners refinancing, then that borrower could not run to a judge looking for a better deal through a cramdown. For those borrowers that the servicer chooses not to modify voluntarily and that must file for bankruptcy, half of any cramdown would be returned to the servicer if the borrower resells the home while still in bankruptcy.

For these borrowers that the servicer chooses not to help, the courts would be constrained as follows: The judge could only reduce the loan principal to fair market value, which is much more than the lender would collect if the home were to be sold in foreclosure. The judge could only reduce the interest rate to the conventional rate plus a reasonable premium for risk, which at the moment would equal around 6.5 percent to 7 percent.

And the judge could only lengthen the term to the longer of 40 years, reduced by the period for which the mortgage has been outstanding or the remaining term of the mortgage.

There are many further restrictions. Loans originated after 2008 are not eligible for bankruptcy assistance.

Loans that are larger than the largest conforming loan limit are not eligible for bankruptcy assistance. Loans that are not 60 days delinquent are not eligible for bankruptcy assistance. Loans that are not in foreclosure are not eligible for bankruptcy. And the whole amendment would sunset at the end of 2012 when the Housing Affordability and Stability Plan expires.

The banks hold the keys to the courthouse. And, even those borrowers the banks refuse to help can only receive assistance that still makes the banks far more money than the only other alternative: foreclosure.

Yet even with all of these restrictions, Mark Zandi from Moody's Economy.com estimates that this change

would save 1.7 million families from foreclosure. Why? Because for most lenders, the Obama administration's foreclosure prevention plan is voluntary. This change to the bankruptcy code would encourage lenders to participate, because offering these modifications allows lenders to effectively veto a modification in bankruptcy. That is a large part of why the President supports this provision, and why he included it as a key element in his plan.

This amendment would prevent foreclosures, which would help us find the bottom in the housing market, which would help the housing markets turn around more quickly, which would help the entire economy start moving again. Perhaps best of all, this amendment wouldn't cost the taxpayers a penny.

Even though this new proposal is airtight in protecting lenders interests, the ideologues in the mortgage industry—outfits like the Mortgage Bankers Association, the Financial Services Roundtable, the American Bankers Association, the Independent Community Bankers Association, and the National Association of Federal Credit Unions—still oppose providing this help to troubled homeowners and the economy at large.

They continue to regurgitate the same tired talking points that have been refuted over and over again by the facts.

They seem to repeat the same six myths. Myth No. 1: Allowing troubled homeowners to receive mortgage assistance in bankruptcy will lead to higher borrowing costs for future borrowers. Reality: Although the Mortgage Bankers Association has claimed in front of the Senate Judiciary Committee that "if this legislation goes through, we will be putting a permanent tax on everybody that buys a house going forward of \$295 per month," there are several reasons why this argument makes no sense.

First, future borrowers aren't eligible for this bankruptcy assistance, so there is no reason why future borrowers should have to pay more to compensate lenders for a risk that doesn't exist.

Second, only borrowers for which foreclosure is the only other alternative are eligible for this bankruptcy assistance. Foreclosures almost always cost banks more than loan modifications that keep families paying each month. No extra costs are being borne by the banks that they could justify passing on to other borrowers.

Third, a study by Adam Levitin of the Georgetown Law School proves definitively that the availability of bankruptcy assistance to some borrowers in the past led to no increase in borrowing costs for others.

There is no reason to think that the same logic wouldn't apply in today's market that supports record low interest rates.

Myth No. 2: Changing the bankruptcy code will cause uncertainty in the mar-

ket. Reality: Although the American Bankers Association asserts that "mortgage cramdowns would add significant risk and uncertainty to mortgage lending," it is in fact the rapidly rising foreclosure rate that is adding risk and uncertainty to mortgage lending.

If potential homeowners think housing prices will continue to fall they will be unlikely to buy a home.

Aggressively preventing foreclosures will keep unnecessary supply off of the market, which will stabilize prices and encourage buyers to return to the market.

Since changing the bankruptcy code would save 1.7 million homes from foreclosure, the Durbin amendment would return a sense of certainty to mortgage lending, not undermine it.

Some of the loudest opponents of my amendment were the chief contributors to the most uncertainty in the credit markets since the Great Depression. They have no credibility to tell us what the markets may or may not judge to create uncertainty.

Myth No. 3: Bankruptcy judges shouldn't be able to break the sanctity of the contract. Reality: The Chamber of Commerce argues that "Cram down provisions would improperly expand the bankruptcy code by granting new powers to bankruptcy judges to modify the terms of existing, legitimate mortgage contracts."

Legitimate mortgage contracts? What is so legitimate about no-doc, interest only, negative amortizing loans that had almost no chance to succeed from the day they are underwritten?

The concept of bankruptcy is enshrined in the Constitution, and bankruptcy has always been a venue in which contracts are restructured.

The Chamber and the banking industry had no problem with applying the sweeping 2005 bankruptcy code changes to all contracts past, present, and future when those changes benefitted businesses. They have no standing to now argue that because of the sanctity of the contract the bankruptcy laws should not be changed.

Myth No. 4: Allowing borrowers to modify mortgages in bankruptcy would shield borrowers from the consequences of their poor decisions to buy houses they could not afford, thereby creating a moral hazard. Reality: The industry that claims we should worry about moral hazard for borrowers is the same industry that helped create the greatest economic crisis since the Great Depression.

Bankruptcy is a painful process for the borrower, not one that is taken lightly. The intent of the legislation is to create the necessary incentives for more modifications to take place outside of bankruptcy.

And what about the families who have done everything right but have the misfortune of living next door to a foreclosure? If we save families from foreclosure we help their neighbors too. There's no moral hazard in that.

My amendment would save the neighbors of prevented foreclosures over \$300 billion in preserved home equity. I will talk much more about that when I return to the floor tomorrow.

Finally, for many borrowers the problem isn't the home itself, but rather the high cost loan they are trapped in. Making the mortgage more affordable will make the home affordable for many families.

Myth No. 5: Restricting this amendment to only subprime and exotic loans is better policy than providing this option to borrowers with all types of loans. Reality: Although the National Association of Federal Credit Unions—which is the smaller of the two credit union associations—continues to argue that we should allow "bankruptcy modification [to] apply to only to subprime or Alt-A (or nontraditional) mortgage loans," I disagree.

Last year I thought that this might be a reasonable compromise. But the foreclosure crisis has expanded far beyond subprime loans. The fastest-growing foreclosure rate by loan type is the traditional prime loan—once considered safe.

We are no longer just trying to solve for bad mortgage underwriting. We're trying to turn around the entire economy, and to do that we have to stabilize the housing markets.

Finally, how would we explain to our constituents that we're providing special assistance to borrowers who took out a riskier type of loan, but the families with a standard, conservative loan who may need a bit of help are out of luck?

Myth No. 6: Because community banks didn't create this crisis, it would be better policy to carve out their borrowers from having the option of bankruptcy assistance. Reality: Look at this picture again. If a community bank really cares about the community it serves, why should this foreclosure be allowed to take place just because the borrower took out a loan with a community bank rather than a big national bank?

Does that matter to the family who lost their home? Does that matter to the family living next door?

These banking associations have generated many myths of terror and destruction that this amendment would create, but the legislative language speaks for itself. And it refutes each of these myths.

Mr. President, 1.7 million families can be saved from foreclosure.

This is the Senate's chance to finally address the heart of our economic crisis, with no bailout money involved.

We may not have a better chance to help turn this crisis around.

Today the Senate will vote on my amendment to the housing bill that would give 1.7 million families a chance to save their homes.

I spoke earlier this week on the floor about the crushing impact to the broader economy that the foreclosure crisis has had.

Mortgages were bundled into mortgage-backed securities, which were sliced and diced into "synthetic collateralized debt obligations" and similar products, which were then sold to unsuspecting investors all over the world.

For a while there, they sold as if they were gold. Well, they are pretty tarnished now. They are now known as "toxic assets."

But I urge my colleagues not to forget that underlying these exotic "toxic assets" are things that we understand far more personally.

At the root of the crisis is the home. Mr. President, 8.1 million of them may be lost, according to Credit Suisse. My amendment will help save 1.7 million of them.

Also at the root of this crisis is the damage to the homeowners who live around these foreclosures, the neighbors who have made every mortgage payment on time. They stand to lose over \$300 billion more, unless we pass my amendment.

I want to emphasize this point for a moment. There are millions of families all over America that have done everything right—they bought only as much house as they could afford, and they have made every mortgage payment on time.

Look at this picture. This house is well-kept, and appears to be the cherished home of a family that has acted responsibly. But this house next door, you can see what this house looks like.

Clearly, the well-kept home is worth much less than it would be if it were next to another well-kept home instead of this boarded-up eyesore.

Situations like this can be seen in each and every state that my colleagues and I represent. Families are in trouble, and their neighbors are suffering along with them.

By voting for my amendment we can save 1.7 million of these troubled families from foreclosure and can save their neighbors over \$300 billion in home equity that would otherwise be lost.

In Florida, for example, we estimate that over 200,000 more families will lose their homes in the next few years if we don't pass my amendment.

Families like Derek and Kellyanne Baehr. As reported in local papers, Derek has been diagnosed with a rare neurological disorder that will eventually require him to use a wheelchair.

The couple has lived in their modest, single-story stucco home for four years, and they are now struggling to pay their mortgage.

After months of trying to work with their lender, they finally received a slight reduction in their interest rate, but "it was like putting a Band-Aid on cancer," Derek said.

"We can't continue to go on this way," said Kellyanne. "I cry about every day."

If my amendment were to become law, this family's lender probably would have offered more than a "Band-Aid on cancer." The lender likely

would have offered a modification that would have kept the Baehrs in their home and paying their mortgage.

And, certainly, avoiding foreclosure would be a better result for both the Baehr's and the lender.

The neighbors who live around families who are kicked out on to the street—like the Baehrs may soon be—typically see the value of their homes—their most valuable asset—take a nose-dive.

In Florida, neighbors of families that lose their homes will watch more than \$36 billion of their assets evaporate unless we pass my amendment.

In Ohio, we estimate that nearly 44,000 more families will lose their homes in the next few years if we don't pass my amendment.

Some time ago I met the Glickens, a husband and wife from Ohio who were persuaded by a mortgage broker to commit to a mortgage that seemed fine at the start.

Then, the adjustable interest rates kicked in. They soon were being asked to pay 60 percent more than the original payments, and they just couldn't keep up.

Families like the Glickens are supposed to reach out to their lender to figure out how to modify the mortgage so that it is more affordable and so that foreclosure can be avoided.

Avoiding foreclosure is better for the homeowner and the bank, right?

Get this: the Glickens' lender charged them \$425 to apply for a loan modification . . . and then turned them down anyway.

The Glickens needed a bit more leverage to negotiate with their lender, leverage that the threat of bankruptcy assistance would provide.

In Ohio, neighbors of families that lose their homes will lose more than \$1.5 billion of their assets unless the Senate passes my amendment.

In Pennsylvania, over 37,000 additional families will lose their homes in the next few years if we don't pass the Durbin amendment.

As one example of many, a divorced father of twin boys in Levittown refinanced his mortgage after his divorce in an attempt to keep a stable home environment for his boys.

The refinance placed him in an interest-only mortgage with American Home Mortgage, which itself went into bankruptcy.

He ended up in chapter 13 trying to make the payments on all of his debts.

But, the bankruptcy court could not help him restructure his mortgage under current law, even though the court has restructured each of his other debts to help him make his payments.

Prior to filing for bankruptcy, he tried to reach an agreement with his lender, but he couldn't find anyone to talk to consistently about the situation and he was given no viable options to catch up on his payments.

This single dad would have benefited from my amendment. So would his neighbors.

In Pennsylvania, neighbors of families that lose their homes will watch more than \$3.3 billion of their assets evaporate unless we pass my amendment.

In Maine, nearly 5,000 additional families will lose their homes in the next few years if we don't pass this bankruptcy provision. If you are watching at home in California or New York that may not sound like a lot of families, but people who live in Maine know just how devastating those losses would be.

For instance, a woman from Woolwich was barely making ends meet when she received a notice that the interest rate on her mortgage was going to increase by 3 percentage points.

She immediately contacted the mortgage company and indicated that she could not handle the additional expense.

The lender told her that they were not going to be able to work with her and there was nothing that they could do for her.

I am confident this woman's lender would have tried a little harder to help if the threat of assistance in bankruptcy loomed.

In Maine, neighbors of families that lose their homes will lose more than \$100 million of their assets unless we pass my amendment.

In Missouri, we estimate that 22,000 additional families will lose their homes in the next few years if we don't pass this amendment.

We are talking about people like a Ford retiree in Kansas City who had fallen behind on his mortgage payments due to a high interest rate on the loan. He passed away, and his widow was unable to keep up with the payments.

The home was worth far less than the outstanding mortgage balance, and she started to receive foreclosure notices. Her loan servicer was not receptive to a discussion regarding a loan modification.

Her monthly income left her with about \$700 after she made this mortgage payment. And her monthly heating bills that winter were \$600.

Again, I have to believe the availability of bankruptcy assistance would have encouraged her lender to work with her.

In Missouri, neighbors of families that lose their homes will watch almost \$1 billion of their assets disappear unless we pass my amendment.

In my home State of Illinois, last year in Chicago alone nearly 20,000 homes were in some stage of foreclosure.

The red dots represent these 20,000 homes. They are everywhere. And the problem is getting worse.

Statewide, my amendment would help 60,000 families avoid foreclosure. Their neighbors would preserve nearly \$20 billion if my amendment becomes law.

How could I not fight for this?

Maybe I shouldn't take this amendment so personally. Perhaps I should

just argue dispassionately about the merits of the proposal, since the merits really do speak for themselves.

But when a family loses its home, that is personal.

The home is where parents tuck their kids in at night. It's where families share their daily stories over meals at the dining room table. It's where secrets are shared, where dreams are born, and where bonds are formed.

Every foreclosure is a tragedy. Every foreclosure is deeply personal for the parents who have to explain to their kids why they can't sleep in their bedrooms anymore. Every foreclosure that can be prevented, should be prevented.

The Senate can stop 1.7 million of them with one vote. The Senate can save their neighbors—our constituents—over \$300 billion in the preservation of home equity with one vote. I urge a “yes” vote.

I ask unanimous consent that the letter of support attached to this statement be submitted for the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HELP 1.7 MILLION FAMILIES STAY IN THEIR HOMES! SUPPORT THE FORECLOSURE AMENDMENT TO THE HOUSING BILL

APRIL 29, 2009.

DEAR SENATOR: The undersigned consumer, civil rights, labor, faith-based, housing, financial, and community organizations representing tens of millions of Americans strongly urge you to vote for the foreclosure prevention amendment that will be offered by Senator Durbin when the full Senate takes up the House-passed housing bill (“Helping Families Save Their Homes Act”) later this week. Our organizations long have supported legislation to empower bankruptcy judges to modify mortgages on primary residences so as to provide the “stick” financially strapped homeowners desperately need to get their lenders to work with them to prevent avoidable foreclosures. Absent this stick, all the voluntary programs that have been put in place during the last 18 months have failed to produce the modifications necessary to save American families and repair the faltering housing market.

The amendment that will be offered on the Senate floor substantially narrows previous versions by enabling the servicer to prevent the borrower from obtaining a mortgage modification in bankruptcy simply by offering the borrower an affordable modification. Any such offer would bar judicial modification of the borrower's mortgage forever. And, with this “stick” in place, the new voluntary modification programs have a substantially greater chance of succeeding, which would help stop foreclosures and stabilize the economy.

Mark Zandi of Moody's Economy.com projects that up to 1.7 million families will be able to save their home from foreclosure if this amendment is approved. At a time when an estimated 6,600 families are losing their home to foreclosure each and every day, there is no time for delay. We urge the Senate to support the amendment to lift the ban on judicial modification of primary residence mortgages in extremely narrowly drawn circumstances. Passage of this legislation is the most important thing Congress can do right now to help arrest the financial crisis and the terrible toll that it is taking on American families.

Sincerely,
AARP.

AFL-CIO.
American Federation of State, County and Municipal Employees (AFSCME).
Americans for Fairness in Lending.
Association of Community Organizations for Reform Now (ACORN).
Calvert Asset Management Company.
Center for Responsible Lending.
Central Illinois Organizing Project.
Change to Win.
Consumer Action.
Consumers Union.
Consumer Federation of America.
DEMOS.
International Association of Machinists and Aerospace Workers.
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW).
Leadership Conference on Civil Rights.
NAACP.
National Association of Consumer Bankruptcy Attorneys. National Community Reinvestment Coalition.
National Consumer Law Center (on behalf of its low-income clients).
National Fair Housing Alliance.
National Federation of Community Development Credit Unions.
National NeighborWorks Association.
National People's Action.
National Policy and Advocacy Council on Homelessness.
North Carolina State Employees Credit Union.
Opportunity Finance Network.
PaxWorld Mutual Funds.
PICO National Network.
Rural Advancement Foundation International—USA.
Service Employees International Union.
United Food and Commercial Workers International Union.
U.S. PIRG.
ACORN-NC.
Affiliated Congregations to Improve our Neighborhoods, Gainesville, FL.
Baldwin County ACT II, Baldwin County, AL.
Bayou Interfaith Together.
Berkeley Organizing Congregations for Action, Berkeley, CA.
Beyond Housing, MO.
Birmingham Area Interfaith Sponsoring Committee, Birmingham, AL.
Brockton Interfaith Community, Brockton, MA.
Brooklyn Congregations United, Brooklyn, NY.
Camden Churches Organized for People, Camden, NJ.
Communities Creating Opportunity—Kansas, Kansas City, KS.
Congregations and Schools Empowered, Glenwood Springs, CA.
Congregations Building Community, Mosto, CA.
Congregations for Community Action, Melbourne, FL.
Congregations Organizing for Renewal, South Alameda County, CA.
Congregations Organizing People for Equality (COPE).
Congregations United for Neighborhood Action, Allentown, PA.
Connecticut Association for Human Services.
Connecticut Legal Services.
Consumer Credit Counseling Service of Forsyth County, Inc., NC.
Contra Costa County Interfaith Supporting Community Organization, CA.
Delta Interfaith Network (DIN).
Essex County Community Organization, Essex County, MA.
Fair Housing Law Project, CA.
Faith in Action Kern County, Kern County, CA.

Faith in Community, Fresno, CA.
Faith United Empowering Leadership (FUEL).
Faith Works, North San Diego County, CA.
Federation of Congregations United to Serve, Orlando, FL.
Financial Protection Law Center.
Flint Area Congregations Together, Flint, MI.
Florida Legal Services.
Greater Long Beach Interfaith Community Organization, Long Beach, CA.
Greater Pensacola Community Organization, Pensacola, FL.
Hope Ministry of Point Coupee.
Housing Preservation Project, MN.
Inland Congregations United for Change, San Bernardino/Riverside/Coachella, CA.
Interfaith Action, Rochester, NY.
L.A. Voice, Los Angeles, CA.
Legal Assistance Corp. of Central Massachusetts.
Legal Assistance Resource Center for Connecticut.
Massachusetts Communities Action Network, Boston, MA.
Metro Organizations for People, Denver, CO.
Metropolitan Interfaith Congregations Acting for Hope, Framingham, MA.
MICA Project, New Orleans, LA.
Moving in Congregations, Acting in Hope, Cortland County, NY.
National Housing Law Project, CA.
Navy Marine Corps Relief Society, Camp Lejeune, NC.
North Carolina Community Action Association.
North Carolina Housing Coalition.
North Carolina State AFL-CIO.
North Carolina State Conference of the NAACP.
Northern Valley Sponsoring Committee, Yuba & Colusa Counties, CA.
Oakland Community Organizations, Oakland, CA.
Orange County Congregation Community Organization, Orange County, CA.
Peninsula Interfaith Action, San Mateo County, CA.
People Acting in Community Together, San Jose, CA.
People and Congregations Together, Stockton, CA.
PICO California, Sacramento, CA.
PICO Louisiana Interfaith Together, Baton Rouge, LA.
Public Justice Center, MD.
Queens Congregations United for Action, Queens, NY.
ROOF Project, Greater New Haven Community Loan Fund.
Sacramento Area Congregations Together, Sacramento, CA.
San Diego Organizing Project, San Diego, CA.
San Francisco Organizing Project, San Francisco, CA.
United Interfaith Action of Southeastern Massachusetts, New Bedford/Fall River, MA.
Vermont Interfaith Action, Burlington, VT.
Western Massachusetts Legal Services.
Working Interfaith Network, Baton Rouge, LA.

Mr. BURRIS. Mr. President, as I address this Chamber today, more Americans find themselves face to face with the grim reality of home foreclosure than ever before. The magnitude of this problem is hard to overstate, and the human cost of forced evictions and shuttered windows is heartbreaking. In the midst of an unprecedented economic crisis, neighborhoods across the country are battered by month after

month of record foreclosures, and there does not seem to be an end in sight. We must therefore move with urgency to put an end to this crisis and help keep hardworking Americans in their homes.

With this increasingly dire situation in mind, I urge my colleagues to pass the Durbin amendment to the Helping Families Save Their Homes Act.

As it stands, 8.1 million homes are expected to be lost to foreclosure before we emerge from this crisis. The Durbin amendment would preserve more than \$300 billion in equity for responsible homeowners and prevent 1.7 million of those mortgages from falling into foreclosure. Together with President Obama's Housing and Stability Plan, this measure would create strong incentives to modify mortgages outside of bankruptcy. Under this plan, a few troubled borrowers would receive controlled assistance in the court system. This empowers homeowners and also protects lenders to ensure that everyone is getting a fair deal.

Some elements of the powerful banking industry oppose what I see as a commonsense solution. They seek to misrepresent our efforts to help Americans remain in their homes, despite the fact that this legislation safeguards their assets too, and even provides lenders with a "veto" over which of their borrowers can go into bankruptcy. Please do not fall victim to the myths that some have tried to spread about this bill. Let me be clear: this measure is not a stopgap, it is not a bailout, and it will not cost taxpayers one more penny. It is a pragmatic and effective solution to a set of problems that have been wreaking havoc on the American families for far too long.

I applaud my colleague, Senator DURBIN, for his leadership on this issue. Where others have pointed fingers and played partisan games, Senator DURBIN has acted swiftly to provide a clear vision and a strong voice on behalf of troubled homeowners in our home state and across the country. I thank him for his hard work in creating this important legislation, and I am proud to support it.

Now is the time to focus on solutions. Now is the time to take swift action to save 1.7 million homes otherwise expected to fall into foreclosure. The day will come when it is appropriate to assign blame, to call those responsible to task for the recklessness that led us here. But first we must act boldly to aid the victims of the mortgage crisis and stop the relentless march of foreclosures across America's heartland. I call upon my colleagues to pass the Durbin amendment without delay.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I know that in a few minutes we are going to be voting on the amendment offered by our colleague from Illinois, Senator DURBIN, and I wish to once again commend him and Senator SCHUMER and others who have been involved not just in the crafting of the amendment, but I wish to thank their staffs. Brad McConnell has done a Herculean job over these past number of weeks, including the 2-week recess period we were out of session, to try to reach a compromise with major lending institutions and others across the country to be supportive of this proposal that Senator DURBIN has asked us to approve, which is to allow judges under the bankruptcy law to work out modifications between lenders and borrowers with home mortgages that are involved in principal residences.

Again, Senator DURBIN has significantly shrunken his original idea to the point where this is a very modest proposal, for a very limited amount of time, affecting circumstances that would be very controlled due to the fears that were raised by others that this would be too broad and far-reaching. As to the point I attempted to make this morning, I am confounded by those who would oppose this amendment. Bankruptcy judges can engage in workouts between borrowers and lenders where vacation homes, holiday homes, recreational vehicles or yachts are involved, but they can't do it on a principal place of residence.

I think that is a hard argument to explain to the American people, most of whom—while they might like to have a vacation or a holiday home or other residences—only have a principal place of residence, so they are restricted. What strikes them—and those of us who are supportive of the Durbin amendment—is how you explain to two families who live next door to each other, one of whom only has a principal place of residence, as most Americans do, and the next-door neighbor who, because of economic circumstances, inheritances or whatever else it may be, has that wonderful beach house or that cabin up in the mountains or that yacht on the lake, and if they are in trouble on those mortgages, the bankruptcy judge can work out a new financial arrangement which allows them to keep that vacation home or keep that boat or log cabin up in the hills. Yet the next-door neighbor, with just a principal place of residence, hears: I am sorry, you are going to foreclosure. We are not allowed to work that out for you.

I don't know how you explain that to people, not to mention the damage you do, of course, to every other neighbor in that community whose property value declines because of the foreclosure, that family who is affected, neighborhood that is affected, economy that is affected.

What the Senator from Illinois has proposed is a very narrow, restricted,

commonsense idea. As I mentioned earlier, meeting with bankruptcy judges in Connecticut on Monday, I raised with them what they thought of the Durbin amendment. They thought it was a wonderful idea. I half expected they would say the courts are crowded, already overcrowded. That was not the argument at all.

Again, I hope my colleagues, as they come to this Chamber, give this that additional consideration. This ought not be a matter that divides us here. This is one that could make some sense, even if it doesn't do as much as we hope it does. I mentioned earlier some 15,000 homes in my State could be positively affected by this amendment. What if it were only 5,000? What if we were off? Is it wrong to try to save 5,000 homes in my State? Or the 325,000, or a number like that, in California, not to mention States that have numbers that vastly exceed what Connecticut could benefit from?

We will not know unless we try. All the things we have tried—and I have been involved with most of them—have never done quite as much as we hoped they would. But until we get to the bottom of the mortgage market problem, until you get to the bottom of that, all these other economic problems are going to be more difficult to solve.

I applaud my colleague from Illinois. He has been tireless in his effort. I express my strong support for what he is trying to achieve here and hope my colleagues will do so as well in the few moments remaining before they come to cast a ballot on this important issue.

You may never do anything that will allow for as much relief to as many families as you will if you cast a positive vote on the Durbin amendment. I would love to tell you these other ideas we are going to work on will have great opportunity, but I must tell you candidly, as the chairman of the Senate Banking Committee, this idea offers more hope for more people than any other idea you possibly ever will vote on.

This is the moment, this is the hour, this is the day to make a difference and I know all my colleagues would like to make a difference for the people in their States who are going through job loss, home loss, retirement loss. Here is one answer that could very well provide the kind of relief all of us would like to see.

I urge the adoption of the Durbin amendment.

Mr. DURBIN. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alabama (Mr. SESSIONS).

The PRESIDING OFFICER (Mr. UDALL of Colorado). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 51, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—45

Akaka	Gillibrand	Mikulski
Bayh	Hagan	Murray
Begich	Harkin	Nelson (FL)
Bingaman	Inouye	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Lautenberg	Stabenow
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Dodd	Lieberman	Warner
Durbin	McCaskey	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—51

Alexander	Crapo	Lugar
Barrasso	DeMint	Martinez
Baucus	Dorgan	McCain
Bennet	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Nelson (NE)
Brownback	Grassley	Pryor
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Byrd	Hutchison	Shelby
Carper	Inhofe	Snowe
Chambliss	Isakson	Specter
Coburn	Johanns	Tester
Cochran	Johnson	Thune
Collins	Kyl	Vitter
Corker	Landrieu	Voinovich
Cornyn	Lincoln	Wicker

NOT VOTING—3

Kennedy Rockefeller Sessions

The PRESIDING OFFICER. Under the previous order requiring 60 votes for the adoption of the amendment, the amendment is withdrawn.

The majority leader is recognized.

Mr. REID. Mr. President, we are now going to proceed to the Strickland nomination. There should be a vote on that within the next couple of hours. We have a very important amendment that is going to be debated this evening, this afternoon, by Senators DODD and SHELBY. It is a substitute to the amendment that is now before the body. It is an extremely important amendment.

I would hope if Senators have any other amendments they want offered to this bill that they should do it. We want to finish this legislation as quickly as we can. It is extremely important we get it done.

We have 3 weeks left in this work period. There are things we have to complete this work period. We have to complete this housing legislation. I would like to do that in the next few days; hopefully, tomorrow. We are not going to have any votes tomorrow after 11 o'clock.

Hopefully, we have all of the cards lined up. We can finish this housing legislation tomorrow. We are going to go to the credit card legislation as soon as we finish this housing legislation. We are going to go, after that, to the procurement legislation. That is a bi-

partisan piece of legislation with Senators LEVIN and MCCAIN.

Then, before we leave, we are going to do the supplemental appropriations bill. There is one other piece of work I wanted to do, but we—it doesn't appear that the HELP Committee is going to be able to have that marked up in time for me to do it. Frankly, we probably would not have time to do it anyway; that is, the FDA regulation of tobacco.

So everyone needs to understand this is work we have to do before we leave. Then when we come back, the next work period is only 4 weeks. I have told Senator KOHL that we are going to do the railroad antitrust legislation during that 4-week work period. We are going to do that either the first or second week. Hopefully, no other emergencies come up that get in the way of not allowing us to do that.

Also, because the budget passed yesterday, as soon as we get the 302(b) allocations, which should be soon, we are going to move as quickly as we can to start working on the appropriations bills.

There is a general feeling of the Democrats and Republicans that we want to be able to get some appropriations bills done.

Senators INOUE and COCHRAN are two of the most valued Senators we have; they are experienced. They should be able to move us through them. So we pretty well understand what the workload is. The main question this afternoon is whether there are other amendments to be offered to the housing bill? During this period, we have a significant number of nominations that we will do our best to work out with the Republicans. We have done pretty well so far. We have quite a chunk still pending. We are concerned about David Hayes, Dawn Johnsen, and a number of others we have to see if we can work out a time agreement on.

AMENDMENT NO. 1018

(Purpose: to provide a complete substitute)

Mr. DODD. Mr. President, on behalf of Senator SHELBY and myself, I call up amendment 1018 and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself and Mr. SHELBY, proposes an amendment numbered 1018.

Mr. DODD. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DODD. I will wait until after the completion of the debate on the Strickland nomination to talk about the amendment. I am sure Senator SHELBY will as well.

EXECUTIVE SESSION

NOMINATION OF THOMAS L. STRICKLAND TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of Thomas L. Strickland, of Colorado, to be Assistant Secretary for Fish and Wildlife.

The PRESIDING OFFICER. There will be 3 hours of debate with 1 hour under the control of the majority and 2 hours of debate under the control of the minority, with 30 minutes under the control of the Senator from Kentucky, Mr. BUNNING.

The Senator from Kentucky.

Mr. BUNNING. Mr. President, I rise in opposition to the nomination of Thomas Strickland to be Assistant Secretary for Fish and Wildlife at the Department of the Interior. I have met with Mr. Strickland, and while he has a distinguished career in public service, I do not believe he is the appropriate candidate to fill this position. His disregard for second amendment rights, coupled with his position on domestic energy production, leaves me little choice other than to oppose his nomination today.

In December of this past year, the Department of the Interior took great steps forward toward reversing the ban on lawful firearms in parks. However, because of one court case on technical grounds, millions of law-abiding park visitors find their second amendment rights challenged yet again. For decades, regulations enacted by unelected bureaucrats at the National Park Service and the U.S. Fish and Wildlife Service have prohibited law-abiding citizens from transporting and possessing operational firearms on Federal lands managed by these agencies. The enactment of these rules preempted State laws, bypassed the authority of Congress, and trampled on the constitutional rights of law-abiding Americans guaranteed by the second amendment for more than 170,000 acres of public lands. No other Federal land management agency has enacted anti-gun rules similar to the Park Service and Fish and Wildlife.

Both the Bureau of Land Management and the U.S. Forest Service allow for the law of the State in which the Federal property is located to govern firearm possession. Neither of these agencies experienced any difficulties as a result of allowing firearm possession.

I have met with my friend, Secretary Salazar, who is now the Secretary of the Department of the Interior, and told him of my support for repealing this firearm ban. At the time, Secretary Salazar agreed with me and stated before the Senate Energy Committee that he supports repealing the ban. This is the same committee that